THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Trial Court Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy.....Respondent,

vs.

The Storage Center – Platt Springs, LLC.....Appellant.

REPLY TO RETURN TO PETITION FOR REHEARING

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Respondent David R. Gooldy hereby responds, by this Reply, to the Return by the Appellant to Respondent's petition for Rehearing. For the reasons stated herein, Respondent asks this Court to grant its Petition for Rehearing.

I.

Bennett v. Investors Title Insurance Company and *Lancaster v. Smithco, Inc.* establishes one principle of law and *McAllister v. Smiley* establishes a second principle of law.

The first principle of law indicates "When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." Bennett v. Investors Title Ins. Co., 370 S.C. 561, 574, 635

S.E.2d 660, 667 (Ct. App. 2006); see also *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965).

McAllister v. Smiley, 301 S.C. 10, 389 S.E.2d 857 (S.C. 1989) establishes a second principle of law. It indicates that "Where a conveyance of land describes the parcel as bounded by a street designated in the conveyance, or refers to a map on which spaces for streets, parks, or other common uses are shown, but the conveyance says nothing about the creation of an easement or a dedication to public use, the conveyee of the land acquires an easement with respect to the street or the areas shown on the map" *Id.* At 857. *Emphasis added.*

The principles of law in the Bennett, Lancaster and Smiley cases are not inconsistent. A plat referenced in a deed, such as the Loflin deed (Exhibit 3), is obviously for descriptive purposes to show acreage, metes and bounds, etc. but that holding does not preclude this Court from recognizing in this case the separate principle of law that a road referred to as boundary in the deed or at least referenced on the plat creates an implied easement; even though nothing is denoted on the plat about the creation of the implied easement, that implied easement was intended. Furthermore, *McAllister v. Smiley* indicates that there needs to be evidence that the easement was specifically not intended. It is the Respondent's contention that the entry of the 0.68 acres on the Loflin plat is not a specific indication that an implied easement was not to be created by this conveyance. The entry of the 0.68 acres on the face of the plat is for the sole purpose of defining the amount of acreage being conveyed, not to abrogate the rule in the *McAllister v. Smiley* case. A proposed buyer would expect that entry to be on its plat to help them determine issue of sufficient acreage and price.

Appellant's argument distinguishing *Bennett* and *Lancaster* from *McAllister v. Smiley* are superficial. Why would the Supreme Court of South Carolina hold that there was an implied

easement in *McAllister* when the plat in the *McAllister* case denoted Tract A as tract conveyed when the identical notation appears on the Loflin plat (0.68 acres)? The only reasonable conclusion is consistent with the *Bennett* and *Lancaster* cases in that both notations were for the purpose of defining the property inside the boundaries of the property but not to exclude an implied easement created by the principle law set forth in *McAllister v. Smiley*.

Appellant attempts to further distinguish *McAllister* from *Bennett* and *Lancaster* by contending that there was no road located adjacent to the Loflin property and that the Loflin plat was not a subdivision plat. The fact that the *McAllister* plat refers to two tracts bounded by the road in question makes no difference. The question in the *McAllister* case was" "Was the abutting road an implied easement for the *McAllister* parcel only?" Secondly, the road on the Loflin plat had a width and length which was established by the Master-in-Equity and not disproved by the Appellant. Thirdly, the Loflin plat was prepared for Mr. Loflin and adopted in the developer's general warranty deed conveying warranty title to Mr. Loflin. Fourthly, *McAllister v. Smiley* indicates that implied easement exists either by referencing the road as a boundary in the deed or referencing the plat in the deed showing the road. Finally, whether you call it a driveway or a road, this land on the southern side of the Loflin plat was used from its inception as an access area, as testified to by the Respondent and Mr. Loflin the original grantee. *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528 recognizes even if the road is unopened and never used, it is still an easement.

This Loflin plat is a subdivision plat. The original grantor to Loflin was conveying this parcel out of a much larger parcel thereby subdividing the original parcel. *McAllister v. Smiley* was a similar subdivision; a subdividing of one parcel into two.

II.

Estoppel theory applies to this implied easement.

How would a subsequent grantee, such as the Respondent, know that there was no implied easement on the southern side of the Loflin property when he took conveyance of the property. Respondent's photo exhibit of the access area gives the impression of a road area as compared to any other suggested purpose of this area and it had been used as a driveway and/or road area. Any attorney checking the title for a subsequent grantee would have seen the same legal description showing the same road area since 2001. The deed description never changed. There is not any evidence that the original grantor took any steps to legally terminate the road area subsequent to his initial conveyance. Is it fair to the Respondent to not allow him to rely upon the chain-of-title record as to the existence of the road especially when the original grantor could have ended this issue at the time of execution and recording of the deed to Mr. Loflin? We have the traditional elements of estoppels where there was a representation, whether intended or not, by recording a deed showing a road which has been relied upon by the subsequent grantees, to their prejudice if the easement does not exist. *Murrells Inlet Corp v. Ward*, 378 S.C. 225, 662 S.E.2d 452, 457.

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Lexington, South Carolina
January 27, 2016

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PROOF OF SERVICE

I certify that I have served the Reply to Return to Petition for Rehearing by email (rstepp@sowellgray.com) and (bdurant@sowellgray.com) and by U.S. regular mail, postage pre-paid on January 27, 2016, addressed to its attorneys of record, Robert E. Stepp, Esquire and Bess J. DuRant, Esquire, Sowell Gray Stepp & Laffitte, L.L.C., 1310 Gasden Street, Post Office Box 11449, Columbia, South Carolina 29211.

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January 27, 2016

The Honorable Jenny Abbott Kitchings
Clerk , Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Gooldy v. The Storage Center – Platt Springs, LLC
Appellate Case No.: 2014-000741

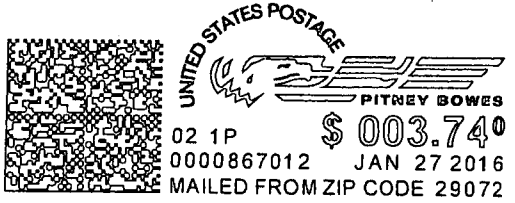
Dear Ms. Kitchings:

Enclosed, please find an original and six copies of our Reply to Return to Petition for Rehearing. Please file the enclosed original and copies and return a copy to me in the enclosed envelope. Please do not hesitate to contact me if you have any questions or concerns.

Yours very truly,

James Randall Davis

Enclosures



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