STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CIVIL ACTION NO.: 2010-CP-15-00247
TED A. NETTLES and JANELL B. NETTLES,	)	
Plaintiffs,	)	**FINAL ORDER**
vs.	)	
SYLVESTER GUESS DREW, JR., DEBRA DREW and COLLETON COUNTY	)	
Defendants.	)	

This case came before the Court for a trial on the merits on June 29 and June 30, 2015. Present at trial were Plaintiffs Ted. A Nettles and Janell B. Nettles (the "***Plaintiffs***"); counsel for the Plaintiffs, Thomas C. Nelson; Sylvester Guess Drew, Jr. and Debra Drew (the "***Drews***"); counsel for the Drews, A. Parker Barnes, Jr.; Mitch Griffith, counsel for Colleton County (the "***County***"); and representatives for the County. All Parties received proper notice of the trial of the above-captioned case. The subject matter and all Parties were properly before this court on the trial date. From the pleadings, trial testimony, and the exhibits, the Court makes the following findings of fact and conclusions of law pursuant to South Carolina Rule of Civil Procedure (S.C.R.C.P.) 52.

FINDINGS OF FACT

1. In 2009, Plaintiffs purchased a 21.07 acre parcel of property in Colleton County, referred to as the "Miller Tract"[1] (the "***Property***"), located adjacent to a dirt road (the "***Road***") which had been gated by the Drews for over 28 years. As a condition to closing, Plaintiffs required that the Miller family file a quiet title action because the property was heirs property. Plaintiffs did not, however, require that the Millers also sue for an easement to the property, which was landlocked, all of which was known to the Plaintiffs.

2. The Drews own two tracts adjacent to the Property, approximately 800 acres in total, and the Road runs through this land on the interior side of the Drews' locked gate. These tracts are referred to in the pleadings as the "North Drew Tract" and "East Drew Tract."[2]

3. A County-maintained road known as Camp Lane ends at the Drews' gate, and the Road continues on the other side of the gate and bisects Drews' property and ends on private lands also owned by the Drews.

4. The Plaintiffs have alleged that the Drews have improperly deprived them of access to the Property because of the Drews' locked gate on the Road.[3]

5. The Plaintiffs' Complaint alleges that the Road is a public or county road, a public neighborhood road, or if not, that they are entitled to an easement for access by necessity, prescription, or prior use.

6. Prior to the Plaintiffs' purchase of the Property, no one had lived on the Property for over 50 years. Both before and after the Plaintiffs' purchase of the Property, the Plaintiffs met with the Drews and requested access via the Road. The Drews owned the Road and the Drews

---

[1] Amd. Compl. ¶6.
[2] Amd. Compl. ¶¶7,8.
[3] Amd. Compl. ¶10.

repeatedly advised Plaintiffs that Plaintiffs could not use the Road for access to Plaintiffs' property based upon multiple security concerns.

7. Before and after Plaintiffs bought the Property, the Drews had offered the Plaintiffs three separate alternate locations for access across other Drew property adjacent to Plaintiffs' property, but Plaintiffs rejected those offers when the Drews refused to pay for the road construction of any of those other routes.

8. At trial, the Plaintiffs were unable to provide any evidence that the Road has ever been used as a public road or a neighborhood road, and provided no evidence that the Road was ever dedicated to the County and accepted by the County.

9. Testimony from several County employees indicated that the County does not claim, maintain, or have any other involvement with the Road inside the Drews' gate.

10. William Washington, the County public works director and a County employee for 39 years, testified at trial that the County performed no maintenance beyond the Drews' gate on the Road, and that the Road was private behind the gate.

11. Christopher "Frankie" Varnadoe also testified at trial. Mr. Varnadoe testified that he, too, had been with the County for 39 years, and that he is the supervisor for roads and bridges for the County. When he began his tenure at the County, he drove a motor grader. Mr. Varnadoe stated that the County was not responsible for grading the Road inside the gate because it was private. He further testified that the Road was not in the County system of roads and bridges, and that it was always known as a private road.

12. Donna Thomas, another County employee, whose job it is to coordinate addresses for the County's emergency services, testified that the Road beyond the gate was a private road.

13. Walter Gene Whetsell, a surveyor with 50 years of experience and also a member of Colleton County County Council, testified at trial as to his opinion that the Road inside the gate is owned by the Drews and is private, that the Drews never dedicated the Road to Colleton County, and that Colleton County never accepted any such alleged dedication. Mr. Whetsell testified that he had conducted many surveys of the entire property and was familiar with all of the Property. Mr. Whetsell also testified that the road was in the middle of lands originally owned by Drews' grandfather and was constructed by Scooter Drew's grandfather. Mr. Whetsell also testified that there were other gates on the Road that were erected by the grandfather and all lands owned by Drews' grandfather ultimately passed to the Defendant Drew and that he owns the road.

14. On March 19, 2010, the Plaintiffs filed a Motion for a Temporary Restraining Order to access their Property by use of the Road, which was heard on April 21, 2010. Employees of the Colleton County Public Works Department provided similar testimony at that hearing that the County does not claim or maintain the Road.[4] On the basis of this testimony, Plaintiffs' motion was denied and the gate remained locked.

15. At trial, Herman Miller testified he recalled that the road was used by locals during the 20th century but did not say that any of that use was adverse. No witness testified that the Drews were ever put on notice that any use of the Road inside the gate was adverse. Mr. Miller could testify only to use in the first half of the 20th century, since he left the Property in 1953. Mr. Miller did recall that the County scrapers scraped the road prior to 1953, but this testimony was countered by that of Mr. Drew, who stated that at that time private landowners could pay the County a small fee to have their roads scraped. Miller could not point to any use at all since he

[4] Def. Ex. 1.

left the property and the Drews thereafter erected the gate across the Road more than 28 years ago.

16. The Plaintiffs' contract to purchase the Property contained a contingency clause for access which stated as follows: "this sale is contingent upon the seller obtaining a signed and recorded statement from Sylvester G. Drew (owner of the lot TMS number 275-00-00-003) stating that the buyers will have unrestrained access to their lot through Camp Ave and any gate(s) erected now or in the future."[5] No such document was ever written or signed by Mr. Drew.

17. The Plaintiffs sought legal advice when it became apparent that access to the Property would be problematic. A series of emails between the Plaintiffs and their attorneys demonstrate that the Plaintiffs were advised before closing on the Miller Property that the Drews owned the Road which was a private road and that the Plaintiffs would need to come to an agreement concerning an easement with the Drews.

18. On September 15, 2009, Janell Nettles wrote George Gardner of Carolina One, Plaintiffs' realtor, "We are not comfortable making a new offer until the access issue is addressed. . . . I would hate to make an offer only to have Mr. Drew want to charge for access or maintenance of his "supposed" private road or deny access and then end up with another court case."[6]

19. Also on September 15, 2009, George Gardner of Carolina One emailed Janell Nettles stating that "The contract is contingent on the seller having Mr. Drew grant permanent access. That has never changed and won't. If that contingency is not met we will not close."[7]

20. On September 24, 2009, Janell Nettles emailed her attorney Catherine LaFond to inform her that "Now Mr. Drew had erected a new (second gate)." . . . . Mrs. Nettles also informed

[5] Def. Ex. 12.
[6] Def. Ex. 22.
[7] Def. Ex. 23.

Ms. LaFond that "We are also told by the Miller's that years ago (maybe the 1950's or 60's) a Drew relative put up a gate at the current location and nobody minded because the Miller property was unoccupied and nobody ever accessed the property."[8]

21. Also, on October 14, 2009, Attorney Catherine LaFond informed Plaintiffs that "we need actual access to the [Property]... [an easement] is the safest way to go and what I have always contended we need..."[9]

22. Attorney Ashley Andrews of the LaFond law firm also emailed the Plaintiffs on October 14, 2009 stating that "[t]here is still a big hurtle [sic] to overcome with the access issue."[10]

23. In a subsequent email also sent on October 14, 2009 to Janell Nettles, Attorney Ashley Andrews informed Mrs. Nettles that "Part of our job at closing is to make sure that the property you are buying has marketable title. Marketable title means that the land you are purchasing is free of defects . . . A question over whether or not there is access to the property clouds the title and potentially makes it unmarketable."[11]

24. On November 6, 2009, Attorney Ashley Andrews wrote to Janell Nettles "We have the search in and the search has concluded that Camp Ave. is county maintained from Hope Plantation Rd. up to where Polite Rd. intersects Camp Ave. From the intersection of Polite Road on, it is a private road. It cannot be determined from the Colleton County records when the road was put there."[12]

25. On November 10, 2009, Janell Nettles emailed George and Beth at Bova's Team at Carolina One, which in part stated as follows: ". . . . Ted (Nettles) received a return call from Catherine stating that the road is private and that we need an easement....which we really don't

[8] Def. Ex. 32.
[9] Def. Ex. 25.
[10] Def. Ex. 26.
[11] Def. Ex. 24; Def. Ex. 27.
[12] Def. Ex. 29.

believe." . . . "We are no longer confident that Edisto Title or Catherine LaFond's office are working in our best interest. Catherine has stated 3 separate (sic) times that we should find someone else to do the work....maybe we should have listened to her."[13]

26. On November 18, 2009, Janell Nettles wrote to Charlotte Bova's Team at Carolina One, "Beth, Tommy (Attorney Tommy Brush who represented Plaintiffs at the closing of the Property) assures me, as of last night, . . . we can still close by the 30th. The access issue, I don't think will be resolved. . . . I really would hate to ask for another extension but Ms. Miller has to realize that as of right now, she would not be able to sell the property as it is unless she had another cash buyer who is willing to make a purchase without access. . . ."[14]

27. Janell Nettles emailed George Gardner on November 20, 2009 "Ted and I are going to proceed with the purchase."[15]

28. Chicago Title Insurance Company issued the Plaintiffs a title insurance policy dated December 4, 2009 that specifically stated, "[r]ights of access to and from the lands insured hereby are neither insured nor guaranteed, notwithstanding any insuring provisions contained elsewhere in the commitment/policy."[16]

29. Chicago Title Insurance Company had issued an A.L.T.A. Commitment to the Plaintiffs which contained the same language quoted above in Paragraph 28.[17]

30. Despite the above representations from their counsel that Camp Road was private, the Plaintiffs purchased the Property with full knowledge that there was no access to the Property.

---

[13] Def. Ex. 28
[14] Def. Ex. 30
[15] Def. Ex. 31
[16] Def. Ex. 13.
[17] Def. Ex. 14.

31. Thus, the Plaintiffs closed on the property with actual knowledge of both the lack of access to the Property and the absence of any recorded dedication or easement which would have provided a basis for them to claim such access.

32. Based on the evidence presented, and as further set forth below, the Court finds that the Plaintiffs have failed to prove that 1) the Road is public, 2) that Colleton County ever maintained the road inside Drews' gate, 3) that the Road inside Drews' gate was ever dedicated to the public, 4) that the public ever used the Road inside the gate, 5) that they have any easement rights in the Road entitling them to use the road for any purposes, and 6) that they have any legal access to the Property.

CONCLUSIONS OF LAW

I. The Road is a private road.

Roads in South Carolina are classified as public highways, neighborhood roads, and private ways. *Kirby v. Southern Railway*, 41 S.E. 765, 768 (S.C. 1902). Public highways and neighborhood roads are able to be used by members of the general public. A public highway is "a principal road leading to market, town, or some place of general resort, and is commonly traveled by all kinds of people." *State v. Harden*, 11 S.C. 360, 368-69 (1879). A neighborhood road is a road which runs between public roads or places. *Id.* at 767. For a road to be classified as a neighborhood road, both termini must be on a public highway or other public place. *Fanning v. Stroman*, 101 S.E. 861, 862 (S.C. 1920) (finding that a road which ends on the edge of a swamp several hundred yards from a landing is not public); *see also State v. Washington* 61 S.E. 896, 897 (S.C. 1908) (holding that a church or mill constitutes a public place). In certain situations, a road can become a neighborhood road by prescription. The test utilized to determine the existence of a neighborhood road by prescription is "general use by all persons, for

public purposes, for an uninterrupted period of twenty years or more." *State v. Sartor*, 33 S.C.L. (2 Strob.) 29, 32 (1847). A private way is a road through privately owned property and is not used by the public, though individuals may develop rights to use private ways (i.e., through prescriptive use). *See Kirby*, 41 S.E. at 767.

Plaintiffs failed to prove that the Road is a public highway or a neighborhood road. The Road is not a "principal road leading to a market, town, or some place of general resort," nor is it "commonly traveled by all types of people." *Harden*, 11 S.C. at 368-69. The Road does not qualify as a neighborhood road, because it does not terminate in another public road or public place as the Road ends on other Drew property. The Drews have had a locked gate in front of the Road for 28 years. The Road has not been used by the public nor maintained by the County during that time. As such, the Road is a private way.

II. The Road was never dedicated to the public.

A private road way may become public if its owner dedicates it to the public and the public then accepts the dedication. As discussed below, the Plaintiffs failed to prove that the Road has been dedicated to the public because Plaintiffs offered no evidence whatsoever that the Road had been dedicated nor accepted by the County. In fact Defendants proved that the Road had never been dedicated nor accepted by the County.

To prove a dedication of a road to the public, the party claiming dedication must show that "(i) the person who owned the land intended to dedicate it to a public use; and (ii) that the dedication was accepted by the public." *Hoogenboom v. City of Beaufort*, 433 S.E.2d 875, 883 (S.C. Ct. App. 1992). In order to show that an owner intended a piece of land to be dedicated, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. *Horry County v. Laychur*, 434 S.E.2d 259, 261 (S.C. 1993). In certain

situations, the intent to dedicate may be implied from allowing lengthy public use of the land. *Cleland v. Westvaco Corp.*, 431 S.E. 2d 264, 266 (S.C. Ct. App. 1993); *see also Cnty. Of Darlington v. Perkins,* 239 S.E. 2d 69, 71 (S.C. 1977) (finding that dedication was implied when the public used the dirt road continuously for fifty years without interference by the landowners). Absent an express grant, one who asserts a dedication must demonstrate clear and unequivocal conduct by the landowner indicating their intention to create a right in the public to use the property. *Derby Heights, Inc. v. Gantt Water & Sewer District*, 116 S.E.2d 13, 16 (S.C. 1960). "Dedication is an exceptional mode of passing an interest in land, and proof of dedication must be strict, cogent, and convincing." *Hoogenboom*, 433 S.E.2d at 883.

Once a claimant has established that a landowner made a dedication of a road to the public, the claimant must also show that the public accepted the dedication. *Hoogenboom*, 433 S.E.2d at 883. Acceptance by a public authority can be expressed or implied, and must be made within a reasonable time. *Helsel v. City of N. Myrtle Beach*, 413 S.E.2d 821, 823 (S.C. 1992). Acceptance of an offer of dedication may be recognized through a public authority's using, repairing, or maintaining the streets. *Id.* (finding that acceptance by the City was implied when the public had used the road continuously, maintained the road, and policed the streets); *see also Boyd v. Hyatt*, 364 S.E.2d 478 (S.C. Ct. App. 1988) ("Public use of road for over thirteen years... is evidence of acceptance by the public of the dedication.").

Based on the foregoing, the Road has never been dedicated to the public. The Plaintiffs failed to show that either the Drews or their predecessors in title made an express or implied dedication of the Road.[18] The Drews erected a gate across the Road to keep the public out, which is utterly inconsistent with an intention that the Road be dedicated to the public. This gate is

[18] Even if it is argued that Mr. Drew is not the owner of the road past the gate, no one professing to be the owner of the road has expressed an intention to dedicate his property to public use in a positive and unmistakable manner.

locked, and it is only unlocked for brief periods when Mr. Drew is entering or exiting his property. Mr. Drew does not provide any other individuals with regular access, except for his friends and family, all of which is permissive use, which cannot be construed as public use. A series of road licensing and permitting agreements indicate that Mr. Drew licensed the right to use the Road to specific persons along with such hunting rights, further showing his intent that the Road be used only with his permission and that no easement could arise from such use.[19] This permission to certain people to use the Road on an occasional basis is a right specific to those certain individuals, and does not meet the standard required to show an intent to dedicate the Road to the public.

The Plaintiffs are similarly unable to demonstrate that any purported dedication of the Road was accepted by the public. The County's employees and Mr. Whetsell, a member of the Colleton County County Council, testified that the County explicitly denies ownership over the Road or any corresponding responsibility to maintain it. Mr. Drew, and his grandfather before him, maintains the Road and there is no use of the Road by the public. Therefore, the Plaintiffs' argument that the Road is a public road by virtue of dedication fails as a matter of law and fact.

III. The Plaintiffs do not have any easement rights to the Road.

The Plaintiffs attempted to advance other theories as to why they have, or are entitled to have, an easement over the Road. All of the Plaintiffs' legal theories as to easements fail because the Plaintiffs cannot satisfy the element necessary to establish an easement of any kind.

An easement is the right of one person to use the land of another for a specific purpose. *Windham v. Riddle*, 672 S.E.2d 578, 582 (S.C. 2009). An easement for a right of way over land can arise by grant, from necessity, or by prescription. *Frierson v. Watson*, 636 S.E.2d 872, 875 (S.C. Ct. App. 2006). In addition, the South Carolina Supreme Court recognized an easement

[19] Def. Ex. 2; Def. Ex. 4; Def. Ex. 6 ; Def. Ex. 9.

implied by prior use in *Boyd v. Bellsouth*, 369 S.C. 410, 633 S.E.2d 136 (2006), although up until that point an easement by prior use had never been explicitly recognized in South Carolina.

A. Plaintiffs do not have an easement by express grant or reservation.

An easement over land can arise from an express grant or reservation in a deed or other instrument. *Sandy Island Corp. v. Ragsdale*, 143 S.E.2d 803, 806 (S.C. 1965). In *Boyd*, 369 S.C. at 423, 633 S.E.2d at 143, and as is in this case, the South Carolina Supreme Court noted, "[t]he fact that there was not an easement allowing Boyd to cross BellSouth's property was a matter of public record, which Boyd and her predecessors in title had knowledge of or at least the means to obtain the knowledge." (citing *Carolina Land Co.*, 265 S.C. at 107, 217 S.E.2d at 20 for the proposition that, "[l]aw imputes to [a] purchaser who proposes to acquire title to real estate notice of recitals contained in any properly recorded instrument in writing which forms [a] link in [the] chain of title to property proposed to be acquired.") The same is true in this case as regards the absence of a recorded easement.

Plaintiffs introduced no evidence showing that either the Plaintiffs or their predecessors in title were ever expressly granted any easement to the Road through deed or other instrument. No easement was sought in the quiet title action of the Miller property. As detailed above, the Plaintiffs had actual knowledge of the fact that there was no express easement by grant to the Road at the time the Plaintiffs purchased the Property. Both the title insurance company and two other attorneys informed the Plaintiffs that the Road was a private road and Plaintiffs needed to obtain an easement from the Drews, and the contract for purchase contained a contingency for access. The Plaintiffs have introduced nothing to contradict these assertions.

B. Plaintiffs do not have an easement by necessity.

An easement for a right of way over land can arise from necessity. An easement by necessity is:

> based upon the presumption that the grantor intended the grantee of a landlocked parcel to have access to his property, a right recognized as essential to the enjoyment of land. Thus, [this] doctrine only provides reasonable access to the dominant estate when there is none; it does not provide a means for ensuring a preferred method of access to a particular portion of a tract when access to the tract is otherwise available.

Morrow v. Dyches, 492 S.E.2d 420, 424 (S.C. Ct. App. 1997). A party claiming an easement by necessity must meet three elements: "(1) unity of title, (2) severance of the title, and (3) necessity of the easement." *Boyd*, at 140-41 (S.C. 2006).

To meet the first element of unity of title, the owner of the dominant estate must show that his land and that of the servient estate once belonged to the same person. *Brasington v. Williams*, 141 S.E. 375, 380 (S.C. 1927). In fact, there must have been absolute ownership of both tracts of land. At the end of Plaintiffs' case, Plaintiffs' counsel stated that he could not show unity of title to the Miller/Drew property, which ends the Plaintiffs' claim that they are entitled to an easement by necessity.

Plaintiffs have failed to meet the requirements of the three element test outlined in *Boyd*. Plaintiffs introduced no evidence to show unity of title and at trial, counsel for Plaintiffs admitted that Plaintiffs cannot prove unity of title.

C. Plaintiffs do not have an easement by prescription.

An easement for a right of way over land may arise by prescription. Prescriptive easements are similar to adverse possession in that they are established by the conduct of the owner of the dominant tenement. One claiming a prescriptive easement must establish (i) the continued and uninterrupted use or enjoyment of the right for twenty years; (ii) the identity of the

thing involved; and (iii) that the use was adverse under a claim of right. *Poole v. Edwards*, 15 S.E.2d 349, 350 (S.C. 1941).

On May 6, 2015, the *Bundy* case was issued by the South Carolina Supreme Court and is factually and legally on point with this case.

In *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 170 (2015), the South Carolina Supreme Court held that a party claiming rights to an easement by prescription has "the burden of proving all elements by clear and convincing evidence." Further, the Court held that "[g]iven that a prescriptive easement results in diminished rights of the property owner, we find that a claimant seeking a prescriptive easement must be held to a strict standard of proof, i.e., Plaintiffs must prove that the claimed use was adverse by clear and convincing evidence." *Id.* The burden on the Plaintiffs to prove they have easement rights over the Road is therefore a high one, and ultimately one which they were not able to overcome.

"Tacking", or adding together successive periods of time in order to meet the requirement of a longer time period, often seen in the context of acquisition of title by adverse possession, also applies to the acquisition of prescriptive easements. 72 A.L.R.3d 648 (originally published in 1976). A party may "tack" a period of use of prior owners in order to satisfy the 20-year requirement for a prescriptive easement. *Morrow*, 492 S.E.2d at 423. However, use by previous owners must also meet all requirements of a prescriptive easement in order for tacking to be used. *Id.* The Court of Appeals took up this issue in *Morrow* where property owners sought to establish their entitlement to an easement by prescription by tacking the period of use of their predecessors-in-interest in order to satisfy the 20-year requirement. *Id.* at 424. The Court held that the claimants failed to meet the burden of establishing entitlement to a prescriptive easement

because they failed to provide sufficient evidence that their predecessors-in-interest met all the requirements of a prescriptive easement. *Id.*

The Court in *Bundy* also found that "tacking" requires a claimant to show privity with predecessors in title. 412 S.C. 292, 313-14, 772 S.E.2d 163, 174-75. Merely referencing the length of ownership of the predecessor in title is insufficient to establish the 20-year period of prescription for the claimants. *Id.* "[The] claimant may not tack [its] adverse use to that of strangers, nor may a claimant tack the claimant's adverse use to that of a predecessor in title when the predecessor's usage terminated before claimant acquired the land." *Id.* (quoting James W. Ely, Jr., and Jon W. Bruce, *The Law of Easements and Licenses in Land*, § 5:19 (Westlaw/Next 2015) (footnotes omitted)).

Herman Miller's testimony and Norvia Miller's statement to Janell Nettles in Exhibit 32 both indicated "that years ago (maybe the 1950's or 60's) a Drew relative put up a gate at the current location and nobody minded because the Miller property was unoccupied and nobody ever accessed the property . . ." Thus there was a failure to prove both a 20 year use of the Road by the ancestors and a failure to prove that such use was adverse.

The Plaintiffs owned the Property only for a year before instituting the present action, so they must "tack" onto previous adverse use by clear and convincing evidence, if any, by predecessors in title to show an easement by prescription. Plaintiffs have failed to carry their burden of proof as to this issue. The Drews have maintained a secure gate for 28 years, precluding adverse use for that time. Moreover, the Plaintiffs have introduced no evidence that the ancestors use was adverse and that they are in privity of estate with predecessors in title who meet all the requirements of a prescriptive easement. Plaintiffs also have not proved that anyone

gave the Drews any notice at anytime of their claims before the Plaintiffs claimed that the Road was a public road.

D. Plaintiffs do not have an easement implied by prior use.

To establish an easement implied by prior use, the party claiming the easement must establish:

> (i) unity of title (which Plaintiffs admit cannot be proved); (ii) severance of title; (iii) the prior use was in existence at the time of unity of title; (iv) the prior use was not merely temporary or casual; (v) the prior use was apparent or known to the parties; (vi) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without prior use; and (vii) the common grantor indicated an intent to continue the prior use after the severance of title.

Boyd, at 139 (S.C. 2006). The Plaintiffs do not meet their burden of satisfying any of the seven elements.

Similar to easements by necessity, easements by prior use are implied by law where "[t]he intent of the parties, as shown by all the facts and circumstances under which a conveyance was made may give rise to an easement by implication." *Boyd*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006) (*citing Hamilton v. CCM, Inc.*, 274 S.C. 152, 158, 263 S.E.2d 378, 381 (1980)). The claimant must prove the prior use was in existence at the time of unity of title, and whether an easement by implication was created "must be determined as of the time of the severance of the ownership of the tracts involved." *Boyd*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006) (*citing Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973)). It is not sufficient for a claimant to show that there has been some prior use of the right of way; the use must be continuous, apparent, and necessary, have existed during unity of title, and the grantor must have demonstrated the intent to continue that prior use after the severance of title.

Plaintiffs offered no sufficient proof tending to show the intent of any parties or their predecessors in title that any prior use of the Road by owners of the Property ripen into an easement. Herman Miller's testimony indicates that his knowledge of any use of the Road by parties other than the Drews ended in 1953. Norvia Miller's statement in Exhibit 32 to Janell Nettles indicates that no one went to the Property after 1950 or 1960. Further, as stated above, Plaintiffs have failed to prove the requisite unity of title and counsel stated this in open court. As such, Plaintiffs' arguments for an easement implied by prior use must fail. Drews' locked gate has been in place for at least 28 years without objection by anyone.

CONCLUSION

Based on the foregoing, I find and conclude that the Plaintiffs have failed to meet their burden of proof on each and every proffered legal theory. Plaintiffs have failed to prove that (i) that Road is a public road, (ii) that Road was dedicated to the public or accepted by the County, and (iii) that the Plaintiffs have or are entitled to have an easement over the Road by express grant, prescription, necessity, prior use, or any other theory. Additionally, the record is abundantly clear that Plaintiffs bought the property with actual notice that no access whatsoever to the Property existed either before or after Plaintiffs closed on the property. *Bundy vs. Shirley, supra,* held that no access existed to Shirley's property. Likewise, Plaintiffs herein have no access to the property purchased from the Millers. Finally, the result of this action is a reminder of the consequence of failing to heed the advice of counsel on multiple occasions. Had the Nettles listened to their legal advisors and real estate professionals, a great amount of time and frustration would have been saved for all parties involved.

Therefore, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

A. Plaintiffs have failed to prove, by a preponderance of the evidence, that the Road is a public road.

B. Plaintiffs have failed to prove, by a preponderance of the evidence, that the Road was ever dedicated to the public.

C. Plaintiff has failed to prove the elements necessary to show that Plaintiff has easement rights over the Road, either under the theory of express grant, prescription, necessity, prior use, or any other theory. That, accordingly, Plaintiffs have no access to the Property and have no right whatsoever to use Camp Road anywhere inside the Drews' gate.

D. That the Drews own fee simple title to the Road inside the gate.

Accordingly, let judgment be entered for the Defendants in all causes of action contained in Plaintiffs' Complaint.

AND IT IS SO ORDERED.

Doyet A. Early, III
Presiding Judge

September 18, 2015
Bamberg, South Carolina