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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

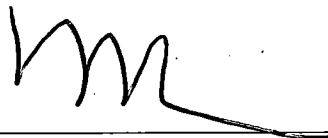
Trial Court Case No.: 2013-CP-40-05740
Appellate Case No.: 2016-00046

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

v.

Roy Drasites and Elizabeth DrasitesAppellants.

INITIAL BRIEF OF APPELLANTS



By: _____

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE MASTER IN EQUITY ERR IN NOT FINDING 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?**

- 2. DID THE MASTER IN EQUITY ERR IN NOT FINDING THE EASEMENT DOES NOT RUN THE ENTIRE LENGTH OF THE APPELLANTS' SOUTHWEST PROPERTY LINE, LEAVING SOME PORTION OF THE APPELLANTS' PROPERTY FREE FROM THE BURDEN OF THE EASEMENT?**

- 3. DID THE MASTER IN EQUITY ERR IN FINDING THE EASEMENT RIGHT OWNED BY THE RESPONDENT GRANTED HIM THE RIGHT OF INGRESS, EGRESS AND ACCESS TO LAKE MURRAY, INCLUDING BY VEHICLE TOWING LIGHT WATER CRAFT?**

STATEMENT OF CASE

Plaintiff, Hamilton Duncan, filed his Summons and Complaint on September 23, 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 Defendant's 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. In their Answer, Defendants admit the existence and origin of the Easement. Further answering the Defendants' allege that the termination point of the Easement is the location point described in said easement as it was on execution date of the easement grant (July 28, 1976) and that with an express easement, Plaintiff cannot unilaterally expand or change the specific provisions in the easement.

A merits hearing was held on this matter on April 28, 2015. Appearing at the merits hearing were the attorneys of record, Defendant Roy Drasites, Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program representative, Carl W. Bostick, Dennis G. Johns, and Larry W. Smith, all three are South Carolina registered land surveyors.

On July 29, 2015, The Honorable Joseph M. Strickland, Richland County Master-in-Equity entered his Order indicating the following:

- 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 hauling 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 the vehicle towing and launching light watercraft; to the extent Plaintiff, or his successors in title, perform such maintenance, it shall be at their expense; and
- e. Defendants are hereby enjoined from discouraging any prospective purchasers of the Duncan Property.

On August 10, 2015, Defendants served their Motion to Alter or Amend the Court's Order dated July 20, 2015. The Honorable Joseph M. Strickland filed his Order denying Defendants' Motion to Amend on December 4, 2015. Order read as follows, "This matter before the Court is a Motion to Alter or Amend Judgment submitted by James Randall Davis, Esquire attorney for the Defendants. The motion is denied."

On January 8, 2016, Defendants filed and served their Notice of Appeal with the South Carolina Court of Appeals.

STATEMENT OF FACTS

FACTS AS TO ARGUMENT I

Appellants and Respondent own property in the same subdivision in Richland County. Appellants' property abuts Respondent's property on the Southeastern side. Respondent has a twenty (20') foot wide easement that parallels the Southeastern boundary of Appellants' property.

Respondent and Appellants' chain-of-title are shown.

RESPONDENT'S CHAIN OF TITLE

By Deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 147, Woodberry Utilities, Inc. conveyed to Jay Clark Case (see *Plaintiff's Trial Exhibit 15*) the following one acre tract:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina, being shown and designated as a one acre tract on a plat prepared for R. J. Marsh, Inc. by Douglas E. Platt, Sr. dated March 25, 1976, and to be recorded: Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road #S-40-2265 whereon it measures 208' feet; On the Southeast by property now or formerly of SCE&G Co. whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; On the Northwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; be all measurements a little more or less.

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 (see *Plaintiff's Trial Exhibit 1*) a non-exclusive right of ingress and egress over a twenty (20') foot strip of land. The Easement Grant reads as follows:

“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” and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray.”

Jay Clark Case then deeded to A. Charles Craft, III and Manita B. Craft (*see Plaintiff’s Trial Exhibit 13*) the property by deed dated December 15, 1995 and recorded December 19, 1995 in Deed Book 1293 at Page 668 wherein he also conveyed the following Easement Grant:

“That certain non-exclusive easement for ingress and egress over a 20 foot strip from the above described property to the 360 contour of Lake Murray, said easement is described in that certain deed to Jay Clark Case from Woodberry Utilities, Inc. recorded in the Office of the RMC for Richland County in Deed Book D393 page 130 and shown on the Plat prepared for Jay Clark Case by Site Consultants and recorded in the Office of the RMC for Richland County in Plat Book 52 page 1316.

The Site Consultants plat referenced in the deed from Jay Clark Case to Mr. and Mrs. Craft is dated April 25, 1988. *See Plaintiff’s Trial Exhibit 18.*

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.

Christine A. Duncan passed away as 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.

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 11413 at Page 18, Respondent Hamilton Duncan, individually purported to conveyed his interest in the Duncan Property to Hamilton Duncan as Personal Representative of the Estate of Christine A. Duncan.

APPELLANTS' CHAIN OF TITLE

By deed dated April 11, 1985, recorded April 16, 1985 in the Office of the Register of Deeds for Richland County in Deed Book 737 at Page 410, Woodberry Utilities, Inc. conveyed to R.J. Marsh 35.7 acres (*see Plaintiff's Trial Exhibit 5*) as follows:

All that certain piece, parcel or tract of land, situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing 35.7 acres, more or less, and being more fully shown and delineated on a plat prepared for Betty A. Thompson by McMillan Engineering Company, dated March 29, 1960 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 15 at Page 234 and having the following boundaries and measurements as shown on said plat; on the north by property of Lowman Home, measuring thereon six hundred eighty-eight (688') feet; on the east by property of Lowman Home, measuring thereon one thousand six hundred thirty-seven (1,637') feet; on the south by property of Wertz,

measuring thereon two hundred fifty-two and three tenths (252.3') feet; on the southwest by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described). Measuring thereon three hundred ninety-eight and five-tenths (398.5') feet; on the south by property of South Carolina Electric and Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon one hundred fourteen and nine-tenths (114.9') feet; on the east by property of South Carolina Electric and Gas Company (as shown on said plat, being property hereinbelow described) measuring thereon one hundred eighty-two and six-tenths (182.6') feet; on the south by a County Road (Dirt), measuring thereon eight hundred eighty-three (883') feet; and on the west by County Road (Paved), measuring thereon along an irregular line one thousand six hundred fifty-nine and five-tenths (1,659.6') feet; be all measurements a little more or less.

ALSO: All of those certain two pieces, parcels or tracts of land situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing in the aggregate 1.23 acres, more or less, and being more fully shown on Partial Plat of lands of Mrs. J.W. Kleckley and W.F. McCarthy, dated October 20, 1959, revised July 27, 1960, as Parcel B containing 0.98 acre, more or less, and Parcel C containing 0.28 acre, more or less, the said plat being attached to and recorded with the deed from South Carolina Electric & gas Company hereinbelow referred to as Exhibit "A" and being bounded on North by property hereinabove described, on the East by property now or formerly of Wertz, on the South by property of South Carolina Electric & Gas Company, and on the West by property hereinabove described.

LESS: The 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° degree contour of Lake Murray. (This property being previously conveyed to Jay Clark Case in Deed Book D393 at Page 150).

LESS: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South

Carolina being shown and designated as a one (1) acre tract on a plat prepared for R. J. Marsh, Inc., by Douglas E. Platt, Sr., dated March 25, 1976, and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road #S-40-2265 whereon measures 208' feet; On the Southeast by property now or formerly of South Carolina Electric & Gas Company whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; On the Northwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; be all measurements a little more or less.

LESS: All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being rear the Town of White Rock, County of Richland, State of South Carolina, being shown and delineated as a 1.00 acre tract on a plat prepared for Charles K. and Margaret C. Miles by Civil Engineering of Columbia, dated October 17, 1977 and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the North by lands now or formerly of Richard Marsh whereon it measures 218.40 feet; On the East by lands now or formerly of Richard marsh whereon it measures 175.58 feet; On the South by unpaved road whereon it measures 243.72 feet; On the West by State Road S-40-610 whereon it measures 239.26 feet; be all measurements a little more or less.

By deed dated June 8, 1995, recorded June 15, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1262 at Page 377, R. J. Marsh conveyed to Silver Pointe Cove Associates, Inc. (*see Plaintiff's Trial Exhibit 4*) the following property:

All those certain pieces, parcel, lots or tracts of land, with the improvements thereon, if any, situate, lying and being in the County of Richland, State of South Carolina, and being more specifically shown and designated as Lots 1, 2, 3, and 4, inclusive, on a plat of Silver Pointe Cove prepared for Silver Pointe Cove Associates, Inc., by C T H Surveyors, Inc., dated April 3, 1995 and recorded in the Office of the RMC for the aforesaid County in Plat Book 55 at Page 7241. *See Plaintiff's Trial Exhibit 3.*

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, (*See Defendants' Trial Exhibit 15*) 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.

The Respondent's easement is shown on the Southeastern border of Appellants' property, Lot 1, on *Plaintiff's Trial Exhibit 3*.

The earliest plat describing the easement in issue is the plat of Wood Trail Subdivision (earlier name of Respondent and Appellants' subdivision) prepared by Civil Engineering of Columbia dated May 14, 1981 (some 5 years after the easement execution on July 28, 1976) and said plat does not show the easement in issue terminating at the waters of Lake Murray but terminates at the edge of a road that ran along the boundary of the Appellants' property and shows the waters of Lake Murray beyond the easement termination point as well as beyond the

road. The Respondent's easement is shown on the Southeastern border of said plat. See *Plaintiff's Trial Exhibit 13*.

Appellants and Respondent had a common grantor for their properties; that being Woodberry Utilities, Inc. Woodberry Utilities, Inc. was conveyed the common source property (35.7 acres) plus fringe lands* by deed from Betty A. Thompson (*See Plaintiff's Trial Exhibit 6*) dated August 14, 1973 and recorded August 14, 1973 in Deed Book 289 at Page 790 in the Office of Register of Deeds for Richland County.

A portion of Appellants' property is fringe land which is a portion of Parcel B in the deed from South Carolina Electric & Gas Company to Betty A. Thompson by deed dated October 30, 1960 and recorded May 1, 1963 in Deed Book 354 at Page 554 in the Register of Deeds Office for Richland County. *See Plaintiff's Trial Exhibits 7 and 9*. Said deed reserved an easement for a road running generally along the Southeastern boundary of the aforesaid described tracts.

The 35.7 acre tract owned by Betty A. Thompson is shown on a plat dated March 29, 1960 prepared McMillian Engineering Company and filed of recorded in Richland County on April 15, 1960. *See Plaintiff's Trial Exhibit 21*. The road that is referenced on the Woodtrail Plat is shown on *Plaintiff's Trial Exhibit 21* on the Southeastern side of the 35.7 acre parcel and is the road that was reserved to SCE&G in *Plaintiff's Trial Exhibit 7 and 9*.

A portion of Appellants' property is fringe land and it is a portion of Parcel B, 0.98 acre, and is *Plaintiff's Trial Exhibit 10*.

FACTS AS TO ARGUMENT II

Carl W. Bostick prepared a plat for the Appellants dated December 15, 1997 (*see Defendants' Exhibit 16*) showing the location of the 360' contour on the Defendants' property.

The Appellants and a neighbor (Bullocks), in 1998, obtained a Lake Murray permit for excavation of the cove of Lake Murray in front of their lots and the establishment of a dock. The application was approved December 4, 1998. The approval allowed for the establishment by the Defendants and Bullock of a retaining wall on their property at the 360' contour of Lake Murray. Said wall was established by the Appellants and Bullock. The permit allows for excavation only below the 360' contour of Lake Murray. *See Transcript pages 85-88.*

Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program, testified that SCE&G regulates the permitting, upgrading and maintaining structures and facilities below the 360' contour of Lake Murray pursuant to directives of the Federal Energy Regulatory Commission and SCE&G had implemented a written management program policy in January 1975, prior in time to the creation of the easement in issue. *See Transcript p. 83.*

Mr. Boozer testified that his opinion was that the 360' contour on the Drasites property and the Respondent's easement crossing the Drasites property was located at the point shown on the Carl W. Bostick survey dated February 3, 2014, which location is where the retaining wall, allowed by the SCE&G excavation permit, is located. *See Transcript p. 92 and Defendants' Trial Exhibit 14.*

Surveyor Bostick has prepared surveys for the Appellants since 1995, including the December 1997 360' contour plat and indicated that the 360' contour location on the Drasites property is where the retaining wall is located and is shown on the Bostick plat dated February 3, 2014 (*See Defendants' Trial Exhibit 14*).

FACTS AS TO ARGUMENT III

Larry Smith, a registered land surveyor, testified as an expert witness for the Respondent. Mr. Smith worked with South Carolina Electric and Gas Company and did all the fringe land surveying on Lake Murray for the power company from 1962-1969, and as a private surveyor is still doing fringe land surveys for the power company. Transcript p. 58. Mr. Smith testified that: (1) the creator of Respondent's easement could only convey an easement to the 360 contour because it did not own the land below the 360 contour; (2) the grantor's property terminated at the 360 contour, Transcript p. 63; (3) the property below the 360 contour came under the Power Company's jurisdiction, Transcript p. 65; and (4) any use of the Power Company's property below the 360 contour had to be with the Power Company's approval, Transcript p. 66.

Tommy Boozer, Shoreline Management Manager of South Carolina Electric and Gas Company, has been such for 25 years. Transcript p. 82. Mr. Boozer testified that: (1) he dealt with developments and different activities around the shoreline, Transcript p. 82; (2) South Carolina Electric and Gas Company had jurisdiction of property owned by it below the 360 contour, Transcript p. 83; (3) this property came under SCE&G's written Shoreline Management Plan. *Defendant's Trial Exhibit 3, Transcript p. 83*; (4) this plan had been in existence since 1975; (5) Respondent, by letter, had requested permission from SCE&G to do certain work below the 360 contour for grading and removing some soil. Transcript p. 84; (6) there was no permit issued by SCE&G for that request, Transcript p. 85; and (7) a boat dock nor a boat ramp would be issued to the Respondent, Transcript p. 85. Page 16 of the Lakes Murray Shoreline Management Plan indicates that a residential land owner who owns property above the SCE&G fringe land will have the right of access by foot to and from the lake.

STANDARD OF REVIEW

“[T]he determination of the scope of the easement is a question in equity.” *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006); see also *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. App. 1998) (“[T]he interpretation of a deed is an equitable matter.”). On appeal in an action in equity tried by the Master, “the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence.” *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. appl 2004). Thus, this court may reserve a factual finding by the Master in such cases when the appellant satisfies us the finding is against the greater weight of the evidence. *Id.*

The Appellate Court reviews questions of law de novo. *Fields v. J. Hayes Waters Builders, Inc.*, 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). “[A] reviewing court is free to decide questions of law with no particular deference to the [Master].” *Hunt v. S.C. Forestry Comm’n*, 358 S.C. 564, 569, 595 S.E.2d 846, 848-49 (Ct. App, 2004).

LAW ANALYSIS

An “easement” is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578.

As a general rule, to constitute a grant of an easement, any words clearly showing the intention to grant an easement are sufficient. 25 Am.Jur.2d. *Easement and Licenses* §15, at 512 (2004). “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 c. Comm’rs of Pub. Works of City of Charleston*, 312 S.C. 460, 441 S.E.2d 331, 335 (Ct. Appl 1994).

Circumstances surrounding the origin of an alleged restriction may also be considered in construing that restriction. *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972).

“If the language is uncertain or ambiguous in any respect, all the surrounding circumstances, including the construction which the parties have placed on the language, may be considered by the court, to the end that the intention of the parties may be ascertained and given effect.” 25 Am.Jur.2d *Easements* §18, at 516 (2004). Cited as *Ten Woodruff Oaks, LLC v. Point Development, LLC*, 385 S.C. 174, 638 S.E.2d 510.

If there is any ambiguity in an easement, the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the easement. The reason for the rule of strict construction against the party preparing the easement is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the easement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423.

Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

A plat which is not referenced or incorporated into an easement description is not made a part of the legal dimensions described in the plat. *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990).

A plat is admissible although not referenced to in any deed in the opposing party's chain of title and the opposing party was unaware of the existence of the plat prior to trial. *Culbertson v. Culbertson*, 273 S.C. 103, 254 S.E.2d 558 (1979).

ARGUMENT I

The easement grant owned by the Respondent is as follows:

All 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.

The Master has found that this language allows the Respondent to utilize the twenty (20') foot strip "for the right of ingress, egress and access to Lake Murray, including by vehicle towing light watercraft." Initially, looking at the expressed terms of the easement, the easement language does not speak with specificity as to the kind or manner of uses. The only expresses access rights from the Respondent's property to the 360° degree contour to Lake Murray. It does not state that the specific use is for access to Lake Murray. The easement makes no reference to a plat that could show further intent as to the purpose of the easement. It is also clear, from the testimony by Respondent's expert witness, Larry Smith, that the grantor on the easement had no further rights in the property beyond its termination point which was the 360° degree contour of Lake Murray. This meant that his easement granting rights terminated at the 360° degree contour. Obviously, the grantor of the easement could only grant easement rights on the property that it owned. The Respondent must base his easement right on what was granted to him by this particular language. The history of the use for the easement does not indicate that it was used for vehicular traffic towing light watercraft. Respondent was not present for the hearing and did not testify on his use. Respondent has presented no evidence on his personal interpretation of the easement language. The other witnesses were three registered land surveyors and a representative from South Carolina Electric & Gas Company whom did not testify as to any specific use of the easement.

Appellants argue that based on the above the easement language is ambiguous in determining the intent of easement. Looking beyond the actual "four corners" of the easement language, the only other recorded document in the Respondent's chain of title is a plat prepared by Site Consultants in 1988; some 12 years after the actual grant of easement in 1976. This plat is not part of the original easement grant but is just referenced in subsequent deeds. This plat could not grant any more rights than what was provided by the language in the original grant.

The earliest recorded evidence, outside the terms of the easement grant, is a plat prepared in 1981 which is referred to in the facts as the "Woodtrail Plat" shows the Respondent's property, Appellants' property and the easement in question. At the termination point of the easement, there is a road. Mr. Marsh executed the deed from Woodberry Utilities, Inc. to Respondent's predecessor-in-title as to the easement. The Woodtrail Plat prepared for R.J. Marsh, Inc. was being prepared for someone who had knowledge of what abutted the Woodtrail plat (i.e. the road which is located at the end of the Respondent's easement). Appellants argue that this plat best expresses the intent of the Respondent's easement in that it connected to a road that traverses the Woodtrail Subdivision and tied into a public road.

Based on Appellants' chain-of-title, which originated out of the 35.7 acre tract conveyed to Woodberry Utilities, Inc. by Betty A. Thompson, the same road on the Woodtrail Plat appears on the 1960 plat showing the 35.7 acres. The fringe lands conveyed by South Carolina Electric & Gas Company to Betty A. Thompson (fringe land in out chain-of-title) reserved to South Carolina Electric & Gas Company the road which is shown on the 1960 plat prepared for Betty A. Thompson showing the 37.5 acres. Appellants argue that this road is the same as that which is appears on the 1960 Woodtrail Plat.

The Master found that the Woodtrail subdivision never developed as shown on the Woodtrail Plat. The three important properties in this case are the Respondent's property, Appellant's property and easement of the Respondent and all are shown on the Woodtrail Plat. The road in question, which was at the termination point of Respondent's easement, had been in existence since 1960. Looking at the surrounding circumstances as to the creation of this easement, either at its origin or within five (5) years of its origin the preponderance of evidence does not show that the purpose of the easement was for access to Lake Murray.

Appellants further contend if this Court finds the easement language is ambiguous, the language should be construed against the Respondent to burden the Appellants' property the least amount possible. The theory being that since the language does not specify launching watercraft by vehicular traffic and there is no evidence it is being use for that purpose, that use should be denied.

ARGUMENT II

Appellants and their neighbor, Bullock, obtained approval from South Carolina Electric & Gas Company by permit in 1998 and 1999 to excavate the property of South Carolina Electric & Gas Company abutting their property lying below the 360° degree contour line. The Lake Murray Shoreline Management Plan, as well as the testimony of Tommy Boozer, representative of South Carolina Electric & Gas Company, confirmed that the excavation was only below the 360° degree contour. Appellants and neighbor Bullock establish a retaining wall at the time of the completion of excavation and said retaining wall was located at the 360° degree contour. The retaining wall has not been relocated since its construction. Only one surveyor, Carl Bostick, has done some surveying work on the Appellants' property since Appellants' purchase in 1995. Prior to the permitted excavation, surveyor Bostick had prepared an elevation survey

showing the 360° degree contour as it abutted neighbor Bullock and Appellants' property. Surveyor Bostick prepared an additional survey in 2014 for the Appellants and established the 360° degree contour, once again, on the Appellants' property which the 360° degree contour noted on surveyor Bostick's plat was located where the retaining wall was constructed. Tommy Boozer of South Carolina Electric & Gas Company indicated the retaining wall, as shown on surveyor Bostick's 2014 plat, was the 360° degree contour on the Appellants' property. Larry Smith, one of the expert witnesses for the Respondent, did not do any survey work on the Appellants' property or the Respondent's property. Surveyor Dennis Johns only commenced his work on the Appellants' property in 2012. The location of the 360° degree contour as denoted in surveyor Bostick's 2014 plat, shows the 360° degree contour off the Lake Murray shore line of the Appellants' property, leaving an area on the Appellants' property which would lie between Respondent's granted easement (360° degree contour) and the shoreline of Lake Murray.

ARGUMENT III

In the Master's Order dated July 29, 2015, he found as follows:

"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 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 language of the Master's Order indicates Respondent had a legal right for access to Lake Murray for the purposes stated in the Order (i.e. launching a light watercraft into Lake Murray). The testimony of Tommy Boozer, Manager of South Carolina Electric & Gas

Company's Lake Murray Shoreline Management Program, testified that the property owned by South Carolina Electric & Gas Company below the 360° degree contour came under the jurisdiction of SCE&G. Larry Smith, former surveyor employee of South Carolina Electric & Gas Company who had dealt with fringe land issues during his professional career, indicated the same. The Lake Murray Shoreline Management Plan makes South Carolina Electric & Gas Company responsible for enforcing Federal Energy Regulatory Commission Directives regarding unauthorized uses of Lake Murray waters and land below the 360° degree contour elevation. The easement rights that the Respondent would have would end at the 360° degree contour because that is the termination point of the easement by the language description in the easement. The Respondent would be subject to approval from South Carolina Electric & Gas Company as to its access to Lake Murray and any use of the waters of Lake Murray. Respondent was notified by SCE&G that there was no permit for soil excavation of the kind requested by the Respondent. This was the shoreline soil where the easement is located. Mr. Boozer had further testified he had received no dock permit or ramp permit. The Management Plan further indicates that an abutting property owner has foot traffic rights on fringe land*. No determination in this hearing decided foot rights were extended to an easement owner. Surveyor Smith described the fringe land as Parcels A, B and C that Mrs. Thompson received which is shown on the fringe land plat introduced into evidence.

*Fringe land is defined as that area owned by South Carolina Electric & Gas Company between the project boundary line and 360° degree contour on Lake Murray. A portion of the Appellants' property is fringe land.

CONCLUSION

Appellants contend that that the preponderance of the evidence does not support the conclusions by the Master that the use of the easement includes access to Lake Murray by vehicular towing and launching of watercraft. Preponderance of the evidence supports that the purpose of the easement was to gain access to a dirt road shown on a plat of Woodtrail Subdivision which road connected to Johnson Marina Road and the easement does not run the entire length of the Appellants' southwest property line, leaving some portion of Appellants' property free from the burden of the easement, which would prevent Respondent from reaching the lake without trespassing on the Appellants' property. Appellants contend that any access to Lake Murray by the Respondent for vehicle towing and launching of watercraft would be determined by South Carolina Electric & Gas Company based on its mandate from the Federal Energy Regulatory Commission if the Respondent wishes to access the property owned by South Carolina Electric & Gas Company which is below the 360° degree contour along the Appellants' property.

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MAR 14 2016

SC Court of Appeals

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Lexington, South Carolina
March 9, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
Appellate Case No.: 2016-00046

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MAR 14 2016

SC Court of Appeals

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

v.

Roy Drasites and Elizabeth DrasitesAppellants.

CERTIFICATE OF COUNSEL

I hereby certify that this Brief of Appellants complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
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Columbia, South Carolina 29211

Re: Hamilton Duncan, Individually and Hamilton Duncan, as Personal Representative of the
Estate of Christine A. Duncan v. Roy Drasites and Elizabeth Drasites
Trial Court Case No.: 2013-CP-40-05740
Appellate Case No.: 2016-00046

Dear Ms. Kitchings:

Enclosed, please find an original and one copy of the Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal. I would appreciate your filing the originals and copies and returning the copy to me in the enclosed envelope.

By copy of this letter, I am serving opposing counsel with the enclosed documents.

Please do not hesitate to contact me if you have any questions.

Sincerely,


Nicole T. Price

Paralegal

Enclosures

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