THE STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Dale Van Slambrook, Master in Equity

Case No. 2012-CP-08-03013

Cynthia Jacqueline Jackson Mills,

Appellant,

v.

Janet Lynne Hudson, Henry Russell Jackson
and Mildred Jackson Hudson,

Respondents.

Initial Brief of Respondents

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II. Did the trial court err in determining that Appellant's claim was barred by SC Code Sections 15-3-380 and/or 15-3-340 even though these code sections are inapplicable to easement by necessity actions?

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Respondents are satisfied with Appellant's Statement of the Case.

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Argument

I. Responding to Appellant's argument that:

The trial court erred in determining that an easement for ingress and egress was not "strictly necessary for enjoyment of the property," even though the property was rendered completely land-locked as a result of the 1935 conveyance to the Respondents' predecessor-in-title.

A. The legal bases for the Trial Court's decision are as follows.

> Taking private property; economic development; remedy of blight.
> (A) Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, ...

S.C. Const. art.I, §13.

> [W]as there any testimony introduced as to the facts necessary to imply an easement reserved in such a case? What facts are necessary? To this end Mr. Washburn, in his work on Easements, in section 3, discusses this matter fully, referring to many cases decided in the English courts as well as in the different states; and while there is a want of uniformity in these decisions, we think the better doctrine seems to be that, in order to establish an easement by an implied reservation, where there has been a unity of possession and a subsequent sale of a portion of the land over which the easement is claimed, said easement must have been apparent, continuous, and necessary at the time of said sale, —the term "necessary" meaning that there could be no other reasonable mode of enjoying the dominant tenement without this easement; and it seems to be less difficult for the grantee of the portion sold to establish the easement than the grantor, for the reason that the grantor ought not to be allowed to derogate from his absolute deed by claiming rights and burdens over the land sold, in the face of his covenants of warranty, even though said burden might have been apparent and continuous at the time. There should be an element of absolute necessity in such cases. See Washb. Easem. p. 60 et seq.
>
> ...

> Nor was there any testimony in this case sufficient to go to the jury on the question whether this ditch was apparent, continuous, and necessary at the time that plaintiff sold the land now claimed to be burdened with it in favor of plaintiff's land.
>
> ...
>
> [N]o witness states, or, if so, we have overlooked it, that the necessity was imperious, nor do they give any facts from which it might be inferred, or tending to prove that there was no other way in which the water at that point might find vent.

Crosland v. Rogers, 32 S.C. 130, 10 S.E. 874, 875 (1890).

> The following from 10 A. E. Enc. L. 420, is quoted by Justice Hydrick in his dissenting opinion in the case of Slater v. Price, 96 S. C. 260, 80 S.E. 376:
>
> "According to the established English doctrine, which is supported by some of the later American authorities, if the owner of both the quasi dominant and the quasi servient tenements conveys the former, reserving the latter, all such continuous and apparent quasi easements as are reasonably necessary to the enjoyment of the property granted pass to the grantee, giving rise to easements by implied grant. If, on the other hand, the quasi servient tenement is granted, while the quasi dominant tenement is retained, no easement is reserved, by implication, unless it is *strictly* (italics added) necessary to the enjoyment of the property retained. These rules are founded on the principle that a grantor shall not derogate from his own grant."
>
> The case of *Elliott v. Rhett*, 5 Rich. Law, 405, 52 Am. Dec. 750, is cited as sustaining the text.
>
> So it is evident that, in determining the degree of necessity required to establish such an easement, a marked distinction is made between a case in which the grantor is claiming the easement over the land conveyed, as being expressly or impliedly reserved to him, and a case in which the grantee is claiming the easement over the land remaining in the title of the grantor. Under the cases cited, particularly *Crosland v. Rogers*, 32 S. C. 130, 10 S. E. 874, it is held that it is less difficult for the plaintiff in the circumstances last stated to establish his easement of necessity than for the plaintiff in the circumstances first stated, for in that event the plaintiff would be claiming in derogation of his own grant, while in the other the

> grantor will be presumed to have granted that without which the land conveyed by him could not be enjoyed.

Brasington v. Williams, 143 S.C. 223, 141 S.E. 375, 383 (1927).

The word *imperious* in this context means, "intensely compelling: urgent."

Webster's Ninth New Collegiate Dictionary 604 (1984).

B. The Trial Court's findings relative to Appellant's argument are supported by the following matters of record.

1. The deed by which Thomas Jackson conveyed the subject property to Ruben Jackson contains the following clause.

> And I do hereby bind myself and my heirs, executors and administrators to warrant and forever defend all and singular the said premises into the said Ruby [sic] Jackson, his heirs and assigns, against me and my heirs and all others lawfully claiming or to claim the same or any part thereof. Plaintiff's Exhibit 7A, p. 2.

2. That deed expresses no reservation of any easement across Ruben Jackson's property.

3. By that conveyance Thomas Jackson's property was left with no access to a public right of way.

4. The only evidence Appellant presented to support her claim to an easement by necessity across Respondents' property were the deeds showing the successive out conveyances by Thomas Jackson. Plaintiff's Exhibits 4, 5, 6 and 7A.

5. Appellant presented no evidence demonstrating any "marked distinction" between Thomas Jackson's case in 1935 and a case where a grantee might claim an access easement by necessity across her grantor's property.

6. Appellant presented no evidence demonstrating the extra difficulty Thomas Jackson would have had to surmount to establish his easement by necessity across Ruben Jackson's property, necessary to overcome the general warranty expressed in his deed to Ruben Jackson.

7. Appellant presented no evidence that the necessity for an access easement across Ruben's property was apparent, continuous or necessary at the time of the conveyance in 1935.

8. Appellant presented no evidence that at the time of the conveyance in 1935, the necessity for an access easement across Ruben's property was intensely compelling or urgent.

9. Appellant presented no evidence about any attempts by Appellant herself to address the possibility of passage through the adjacent properties to the west, south and east of hers.

Crosland best matches the facts of Appellant's case. Crosland conveyed out a part of his property that included a ditch that drained property he retained. He did not reserve an easement for the ditch in favor of the property he retained. A successor to the property he conveyed out blocked the ditch. Crosland sued. Thus, in *Crosland* the grantor of property sued a successor in title to that property for an easement to serve property he continued to own.

The mere fact that Crosland conveyed the property he later sought an easement over was not enough. The *Crosland* Court searched the record for testimony that the necessity for the easement Crosland sought was apparent, continuous, necessary, absolute and imperious at the time of Crosland's conveyance. The Court found no such evidence. The mere out-conveyance was not sufficient. The Court required more evidence. It found the record lacked that additional evidence. The Appellate Court affirmed the Trial Court's nonsuit of Crosland's case.

That is what happened with Appellant. The trial court determined that the mere out conveyances by Appellant's grandfather in the 1930s were not enough. It required additional evidence from the Appellant that proved that at the time of the conveyance to Ruben Jackson in 1935 the necessity for an easement across Ruben's property was apparent, continuous, necessary, absolute and imperious for the enjoyment of the land Thomas Jackson kept for himself. Appellant provided no such evidence.

Appellant relied solely upon the 1935 conveyance to Ruben to try to prove strict necessity. She presented no evidence about the circumstances surrounding that conveyance to demonstrate the degree of necessity required to support a finding that Thomas Jackson impliedly reserved an access easement across the west end of Ruben's property, despite his general warranty to Ruben.

II. Responding to Appellant's argument that:

The trial court erred in determining that Appellant's claim was barred by SC Code Sections 13-3-380 and/or 15-3-340 because these code sections are inapplicable to an easement by necessity.

A. The legal bases for the Trial Court's decision are as follows.

There is universal acceptance of the logic of Statutes of Limitations that litigation must be brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation

Webb v. Greenwood County, 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956). "[S]tatutes are designed to promote justice by forcing parties to pursue a case in a timely manner. Parties should act before memories dim, evidence grows stale or becomes nonexistent, or other people act in reliance on what they believe is a settled state of public affairs." *State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 19, 528 S.E.2d 408, 413-14 (2000).

Statutes of limitation evolved over time with definite purposes in mind. They protect people from being forced to defend themselves against stale claims. The statutes recognize that with the passage of time, evidence becomes more difficult to obtain and is less reliable. Physical evidence is lost or destroyed, witnesses become impossible to locate, and memories fade. With passing time, a defendant faces an increasingly difficult task in formulating and mounting an effective defense. Additionally, statutes of limitation encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately.

Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 163-64, 511 S.E.2d 699, 706 (Ct.App.1999).

Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. 54 C.J.S. *Limitations of Actions* § 2, at 16-17 (1989). Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. 51 Am.Jur.2d, *Limitation of Actions* § 18, at 603 (1970). One purpose of a statute of limitations is "to

> relieve the courts `of the burden of trying stale claims when a plaintiff has slept on his rights.'" *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct.App.1989) (quoting *Burnett v. New York Cent. R.R.*, 380 U.S. 424, 428, 85 S.Ct. 1050 1054, 13 L.Ed.2d 941, 945 (1965)). Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. 51 Am.Jur.2d *Limitation of Actions* § 17, at 602-03 (1970).

City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 231-232, 599 S.E.2d 462 (Ct. App., 2004).

> No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.

S.C. Code Ann. §15-3-340 (1976), 1932 Code Civ. Pro. §366(1).

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

S.C. Code Ann. §15-3-380 (1976), 1932 Code Civ. Pro. §377.

> An action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued.

S.C. Code Ann. §15-3-600 (1976), 1932 Code Civ. Pro. §386.

> "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*, 381 S.C. at 201, 672 S.E.2d at 582 (quoting *Douglas v. Med. Inv'rs, Inc.*, 256 S.C. 440, 445, 182 S.E.2d 720, 722 (1971)).
>
> ...

> Although the rights of the easement owner are paramount to those of the landowner as to the easement, the easement owner's rights are not absolute but are limited, so both the owners of the easement and the servient tenement may have reasonable enjoyment. *Id.* The owner of an easement has all rights incident or necessary to its proper enjoyment but nothing more. *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973).

Snow v. Smith, Op. No. 5396 (S.C. Ct. App. filed March 2, 2016).

B. The Trial Court's findings relative to Appellant's argument are supported by the following matters of record.

1. Thomas Jackson conveyed the subject property to Ruben Jackson by general warranty deed on September 21, 1935. Thomas Jackson died over ten years later in 1947. Plaintiff's Exhibit 7A and 7C.

2. Appellant presented no evidence that Thomas Jackson commenced any action to establish an easement by necessity across Ruben Jackson's property.

3. Appellant presented no evidence that Thomas Jackson possessed any discernable access easement across Ruben Jackson's property.

4. Appellant presented no evidence that the heirs of Thomas Jackson possessed any discernable access easement across Ruben Jackson's property while they owned Thomas' property from 1947 to January 1969, a period of twenty-two years.

5. Appellant presented no evidence that these heirs commenced any action to establish an easement by necessity across Ruben Jackson's property.

6. Appellant presented no evidence that John H. Jackson or the Appellant ever possessed any discernable access easement across Respondents' property. The passage from the trial transcript Appellant quotes in her brief describes no distinct road by location or size and describes no possession of such.

7. Appellant testified in that passage that, "when we got Pudgy Mason to survey it off, he just squared it off, okay, back in the day." This is a reference to her own property. Transcript of Final Hearing, March 31, 2015, page 92, lines 12-14.

8. A notation in the plat by Ashley Land Surveying, Inc. dated September 25, 2005, that depicts Plaintiff's property as Lot 3, references a "Plat by H.P. Mason dated February 6, 1982, depicting this lot." Plaintiff's Exhibit 11.

9. The legal description for her property in Appellant's November 30, 1983, deed does not state a public road as a boundary and does not include a grant of an easement to a public road. Plaintiff's Exhibit 8.

10. The plat by Ashley Land Surveying, Inc. dated September 25, 2005, depicts her property (identified as Lot 3) as landlocked, referring to a plat by Appellant's surveyor dated February 6, 1982. Plaintiff's Exhibit 11.

11. Plaintiff's Exhibit 11 includes notations that this plat was "Revised on November 21, 2006, to show 50' ingress/egress easement," and "Revised on January 25, 2007, to abandon the property line." The only line this plat shows to be abandoned was the northerly boundary line of Appellant's property.

12. Plaintiff's Exhibit 11 shows that this plat was recorded on January 30, 2007. It further shows that it is not a valid plat; it was cancelled by Court Order in case 2006-CP-08-2581.

13. Ruben Jackson and his family have possessed without disturbance the property conveyed to him by general warranty deed continuously from September 1935 up to Appellant's lawsuit she commenced in November 2006, a period of seventy-one years, and up to Appellant's present lawsuit she commenced in October 2012, a period of seventy-seven years.

The pronouncements in *Snow v. Smith* affirm that an easement is indeed an interest in real property, a right to possess another person's property for a specific purpose. In the statutes cited above it falls into the categories of "the possession of real property" and "any interest therein." Regardless, some statute of limitations must apply to this case. If the statutes applicable to actions for the recovery of real property do not apply, then the catch-all Section 15-3-600 appears to be the most applicable.

Thomas Jackson had the opportunity to commence an action for about twelve years. Assuming *arguendo* the accrual of the cause of action renewed each time title passed, which Respondents do not concede, from 1947 to 1969, a period of twenty-two years none of Thomas' heirs filed the lawsuit. As of November 30, 1983, Appellant had title to the entire property. She did not commence any judicial action to acquire access across Respondents' property until November 28, 2006, a period of twenty-three years. It appears Appellant had reasonable notice of the lack of access as early as February 1982, when an independent surveyor drew a plat of her property before she took title.

In addition to all of that, Ruben Jackson and his family have had title to and have possessed their property undisturbed from September 1935 to November 2006, and to October 2012, periods of seventy-one years and seventy-seven years respectively. This lapse of well over forty years certainly applies to Appellant's case. "And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period." S.C. Code Ann. §15-3-380 (1976).

The only sources of evidence about the circumstances surrounding Thomas Jackson's conveyance to Ruben Jackson and the issue of access to Thomas' property would have been Thomas and Ruben. Thomas has been gone for sixty-five years. Ruben has been gone twenty-seven. Appellant could present no evidence derived from these two sources about the circumstances surrounding their transaction. Appellant's father John H. Jackson may also have had some relevant information. He has been gone for thirty-eight years. Here is a fine example of the reason for the statutes of limitations and repose.

III. Responding to Appellant's argument that:

The trial court erred in its ruling on the appellant's alternate theory for the date of severance being the 2008 Order and in the weight the trial court gave to this portion of Appellant's case.

A. The legal bases for the Trial Court's decision are as follows.

The elements of a claim for easement by necessity are: (1) unity of title, (2) severance of title, and (3) necessity. *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 418–19, 633 S.E.2d 136, 140–41 (2006). "To establish unity of title, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person." *Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002). Severance of title means that title to a larger tract was "severed" by conveyance of a part to the plaintiff's predecessor in title and of a part to the defendant's predecessor in title; "they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance." *Brasington*, 143 S.C. at 246, 141 S.E. at 382; see also *Turnbull v. Rivers*, 14 S.C.L. 131, 139 (Ct.App.1825) ("The necessity by which a person derives a right of way, is when one person sells to another lands inclosed on all sides by other lands. Here[,] the law imposes an obligation on the seller to allow the purchaser a right of way over his adjacent land.").

Paine Gayle Props., LLC v. CSX Transp., Inc., 400 S.C. 568, 735 S.E.2d 528, 539 (Ct. App., 2012).

The following form or purport of a release shall, to all intents and purposes, be valid and effectual to carry from one person to another or others the fee simple of any land or real estate if it shall be executed in the presence of and be subscribed by two or more credible witnesses:

"The State of South Carolina.

"Know all men by these presents that I, A B, of _, in the State aforesaid, in consideration of the sum of _ dollars, to me in hand paid by C D of _ County, State of _, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant,

bargain, sell and release unto the said C D all that (here describe the premises), together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto said C D, his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular said premises unto said C D, his heirs and assigns, against myself and my heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

"Witness my hand and seal this _ day of _ in the year of our Lord _ and in the _ year of the independence of the United States of America. "_ [L.S.]"

S.C. Code Ann. §27-7-10 (1976).

Conveyance

In real property law. In the strict legal sense, a transfer of legal title to land. In the popular sense, and as generally used by lawyers, it denotes any transfer of title, legal or equitable. The transfer of the title of land from one person or class of persons to another. An instrument in writing under seal, by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, etc.

Conveyance, Black's Law Dictionary 402 (4th ed. 1968).

Title

Title is the means whereby the owner of lands has the just possession of his property. The union of all elements which constitute ownership. Full, independent and fee ownership. The right to or ownership in land.

Title, Black's Law Dictionary 1655 (4th ed. 1968).

In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title. See *Haithcock v. Haithcock,* 123 S.C. 61, 115 S.E. 727 (1923).

Hoogenboom v. City of Beaufort, 315 S.C. 306, 433 S.E.2d 875, 880 (Ct. App., 1992).

B. The Trial Court's findings relative to this argument are supported by the following matters of record.

1. Judge Watson's 2008 order does not identify a grantor and a grantee. Plaintiff's Exhibit 10.

2. Judge Watson's order does not contain words of grant, bargain and sale. Plaintiff's Exhibit 10.

3. Judge Watson's order does not include the signatures of two witnesses. Plaintiff's Exhibit 10.

4. The duly probated Will of Appellant's father John H. Jackson describes her property as "the two (2) acres of land which I purchased from the Heirs of my father the late Thomas Jackson." Last Will and Testament of John H. Jackson, July 28, 1970, page 1. Plaintiff's Exhibit 8.

5. According to Plaintiff's Exhibit 11, in February 1982, Appellant's surveyor Pudgy Mason measured her property as containing 1.887 acres. Appellant's November 30, 1983, deed describes her property as containing two acres, more or less. Plaintiff's Exhibit 8. In her 2006 lawsuit she described all the property she claimed by this same legal description in her November 30, 1983, deed. Plaintiff's Exhibit 14. After Judge Watson's 2008 order Appellant's property described in her November 30, 1983, deed remained fully intact. Plaintiff's Exhibit 10.

6. Judge Watson's 2008 order did not order that a part of Appellant's property be conveyed to Respondents. There is no deed that reduces the size of

Appellant's property, or that increases the size of Respondents' property pursuant to that order. Plaintiff's Exhibit 10.

To support her theory in her present case that Judge Watson's 2008 order was the severance, Appellant argues that Judge Watson's order adjudicated for the first time that the property she claimed was actually part of the lands conveyed to Ruben Jackson in 1935 or subsequently acquired by the heirs of Ruben Jackson by adverse possession. More precisely Judge Watson's order merely states,

> THE COURT finds wholly for the Defendants and that the lands in question are part and parcel of TMS No. 180-00-02-017, lands of Mrs. Learline Jackson (life estate). This finding is based upon the testimony of all witnesses presented, and the deeds and documents examined by the Court.
>
> FURTHER, the Court finds that even absent the chain of title examined, the lands in question would still belong to Defendant Jackson by virtue of her continuous, hostile (to the claims of the Plaintiff), open, adverse, notorious, and exclusive use, occupation, and /or possession of the land for a period of time exceeding that required for a finding of ownership by adverse possession.

Final Order Denying Plaintiff Relief and Quieting Title in Defendant Learline Jackson, in *Cynthia J. Mills v. Learline Jackson, Janet L. Hudson, Robert R. Hyden*; case number 2006-CP-08-258, pp. 3-4. Plaintiff's Exhibit 10.

It further states, "THE COURT FURTHER FINDS that the recordation of the inaccurate Plat commissioned by Ms. Mills constitutes a potential cloud on the title to the lands of Mrs. Jackson, and shall be cancelled of record." Final Order, *id.* p. 4. Plaintiff's Exhibit 10.

Appellant further argues that the 2008 order was the point in time that a reasonable person would first be on notice of the ownership for the property in question.

Appellant finally argues that it was not until the 2008 order was issued that she actually realized her property was landlocked. She actually had a clue about the ownership of the property in question and that her property was landlocked in 1982 when her surveyor Pudgy Mason drew her a picture. She had a clue about the extent of her property when her father's Will was published in 1974 conceding he only had two acres.

Aside from all that, Judge Watson's order merely found that certain facts existed as of 1935 and were continuing up to 2006. It was merely a determination that the land Appellant claimed was a part of Ruben Jackson's property. The order was merely a notice to her of the ownership of the property she claimed. A finding, a determination or notice that makes a person realize that property she believed she owned actually belongs to someone else, does not reach the level of a conveyance of title. It merely advises her that her belief was erroneous.

Her belief is based upon a notion that since Ruben Jackson's deed describes his property as containing only three acres, she owns everything over that. She made a run at Respondents' property based upon a perceived defect in their ancestor's deed. *Haithcock* and *Hoogenboom* teach us that that alone is inadequate.

IV. Responding to Appellant's argument that:

The trial court erred in determining that Appellant's claim was barred by the Doctrine of Res Judicata because the 2006 case was a declaratory judgment action.

A. The legal bases for the Trial Court's decision are as follows.

> Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.
>
> J. Flanagan, *South Carolina Civil Procedure* p. 642 (1996).
>
> Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Sub-Zero Freezer Co. v. R.J. Clarkson Co.,* 308 S.C. 188, 417 S.E.2d 569 (1992). Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina,* 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.,* 308 S.C. 467, 419 S.E.2d 217.(1992); *Sealy v. Dodge,* 289 S.C. 543, 347 S.E.2d 504 (1986).

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106 (1999).

B. The Trial Court's findings on this Argument are supported by the following matters of record.

1. The Janet L. Hudson named as a defendant in Appellant's 2006 law suit is one and the same as the Janet Lynne Hudson who is a Respondent in Appellant's present suit. She has title to the land over which Appellant claims an easement.

2. The transaction or occurrence giving rise to Appellant's claim in her 2006 case was the 1935 conveyance by her predecessor in title of the subject property to Respondents' predecessor in title. The transaction or occurrence giving rise to Appellant's present claim for an easement over the same property is the same transaction.

3. The legal description for her property in Appellant's November 30, 1983, deed does not state a public road as a boundary and does not include a grant of an easement to a public road. Plaintiff's Exhibit 8.

4. The legal description in Appellant's deed describes her property by the names of adjacent landowners, particularly Ruben Jackson on the north. *Id.*

5. The plat by Ashley Land Surveying, Inc. dated September 25, 2005, depicts her property (identified as Lot 3) as landlocked, referring to a plat by Appellant's surveyor H.P. Mason dated February 6, 1982. Plaintiff's Exhibit 11.

6. Plaintiff's Exhibit 11 includes notations that this plat was "Revised on November 21, 2006, to show 50' ingress/egress easement," and "Revised on January 25, 2007, to abandon the property line." The only line this plat shows to be abandoned is the northerly boundary line of Appellant's property.

7. Plaintiff's Exhibit 11 shows that this plat was recorded on January 30, 2007. It further shows that it is not a valid plat, it was cancelled by Court Order in case 2006-CP-08-2581.

8. Appellant commenced case number 2006-CP-08-2581 on November 28, 2006, seven days after the plat was revised to show the ingress/egress easement and about two months before it was revised to show Lot 2 and the abandonment of her property line. Plaintiff's Exhibit 14.

9. Judge Watson's 2008 order in Appellant's 2006 case (2006-CP-08-2581) states that "the trial on the merits was conducted on December 11, 2007." It further states that, "[s]he also testified that should the Court find her to be the owner of the parcel titled Lot 2 in the aforementioned survey, that would then give her access to US Highway 17A from her property." Final Order, *id.* p.2. Plaintiff's Exhibit 10.

Appellant knew she had an access issue in 2006. She knew in 2006 that a judicial determination that she did not own a strip of land to U.S. Highway 17A would be a judicial determination that she had no access to Highway 17A. Her case for title to any land was very weak. She had the same facts then as now. She had the same law then as now. She had the opportunity to plead an easement by necessity across Respondents' property in addition to pleading ownership of a strip of land across Respondents' property.

Judge Watson said what he said in the hearing on Appellant's Motion for Summary Judgment because Appellant did not plead an easement by necessity and did not ask for one at the trial. According to *Plum Creek* and *Hilton Head Center of South Carolina, Inc.*, she should have.

Appellant's claim, her issue, the remedy she sought, in both cases was access to U.S. Highway 17A across the same strip of land of Respondents' property. Both her lawsuits were for access. The first was styled as a claim to ownership of a portion of Respondents' property on the basis of a tenuous notion about a defect in Ruben Jackson's deed. This present suit was a second bite based upon tenuous evidence to support a claim for an easement by necessity.

Conclusion

South Carolina holds a general warranty in a deed in very high regard. If a grantor of property later commences an action against her grantee to claim an easement by necessity over her grantee's property, then, in order to overcome that absolute grant, South Carolina requires evidence of a degree of necessity that is greater than that which it requires if the claimant was the grantee seeking an easement by necessity over her grantor's property.

Appellant failed to present any evidence demonstrating that extra degree of necessity. Appellant could not have produced any evidence about the circumstances surrounding the severance creating this situation that would have enlightened us about the intent of the parties to that transaction. All the witnesses are long gone.

In 2006 Appellant had the opportunity to address all issues related to access for her property as against these Respondents. She failed to do so. Respondents and their father and grandfather have possessed and occupied the land over which Appellant makes her claim, by virtue of a written instrument, undisturbed for a period of time well over forty years.

This honorable Court should affirm the Trial Court in all respects.

Respectfully submitted,

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Summerville, South Carolina

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