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 Drasites..... Appellants.

INITIAL BRIEF OF RESPONDENT

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2. **DID THE MASTER-IN-EQUITY ERR IN RULING THAT RESPONDENT MAY UTILIZE THE EASEMENT FOR VEHICULAR USE TOWING LIGHT WATERCRAFT?**

STATEMENT OF THE CASE

The Appellants have appealed the Order of The Honorable Joseph M. Strickland, Master-In-Equity for Richland County, dated July 20, 2015, filed with the Clerk of Court for Richland County on July 29, 2015 (the "Order"), and the Order Denying Motion to Alter or Amend Judgment dated December 1, 2015, filed with the Clerk of Court for Richland County on December 4, 2015. Judge Strickland ruled "the evidence in the record, the testimony, and the language of the Easement Deed itself, all lead me to find and conclude that the purpose of the Easement is and was to access Lake Murray and burdens the entire length of the Drasites Property from the Duncan Property to the original boundary of the Appellants' Property with Lake Murray. (Order, p. 9; R. ___). Relevant to this Appeal, Judge Strickland ruled that (i) the Easement burdens the entire length of the Appellants' Property; (ii) the purpose of the Easement is for ingress, egress, and access to Lake Murray; and (ii) included within the Respondent's rights to use the Easement is the right to utilize the easement for vehicular use towing light watercraft. (Order, p. 12; R. ___).

This matter was commenced by the filing of the Summons and Complaint on September 23, 2013. Appellants filed their *Pro Se* Appearance and Answer on October 14, 2013. The case was referred to The Honorable Joseph M. Strickland, as Master-in-Equity for Richland County,

by Order of Reference dated December 9, 2013, filed on December 12, 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 the case. Also by Consent Order dated June 19, 2014, Plaintiff was granted leave to amend. In his Amended Complaint and pertinent to this Appeal, Plaintiff/Respondent sought (i) an injunction enjoining Appellants from interfering with or otherwise obstructing Plaintiff's right-of-way (as more fully hereafter defined, the "Easement"); (ii) a declaration that the Easement extends to the edge of Appellants' property and that Plaintiff is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing light water craft and enable Plaintiff to launch water craft from the Easement.

In their Answer to the Amended Complaint, Appellants admit the existence and origin of the Easement. Appellants also admit that they, along with the adjacent property owner, excavated the cove where Appellants' property is located. Finally, Appellants assert that the easement cannot be unilaterally expanded or changed by Plaintiff or its predecessors in title, and that the termination point of the Easement is a point on Appellants' Property before the waters of Lake Murray.

A hearing was scheduled for October 16, 2014; however, prior to the hearing the parties reached an agreement that a third surveyor would be appointed by the surveyors previously retained by the parties, with the opinion of the third surveyor being binding on the parties. Following the hearing, Judge Strickland found the results of the third party surveyor (in addition to the surveyor that each party had previously retained) inconclusive and required the parties to proceed with a merits hearing on April 28, 2015.

Following the April 28, 2015 merits hearing, Judge Strickland found for the Plaintiffs and entered his order on July 29, 2015. Appellants filed their Motion Pursuant to Rule 52 and Rule

59, SCRCP on August 10, 2015 which was denied after a hearing by Order entered December 4, 2015. On January 8, 2016, Appellants filed their Notice of Appeal.

STATEMENT OF FACTS

This appeal involves the scope of an easement granted by Appellants' predecessor in title to Respondent's predecessor in title. By deed dated July 28, 1976, recorded August 3, 1976 in the Office of the Register of Deeds for Richland County, South Carolina ("Land Records") in Deed Book D393 at Page 150 (the "Easement Deed"), Woodberry Utilities, Inc. conveyed to Jay Clark Case the following described easement (the "Easement"):

> 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 (sic) contour of Lake Murray.
>
> Being part of the property conveyed to Woodberry Utilities, Inc. by deed from Betty A. Thompson dated 14 August 1973 and recorded 14 August 1973 in the RMC Office for Richland County in Deed Book D289 at Page 790.

(Easement Deed; R. ___).

It is undisputed in this appeal that the Easement Deed contains a scrivener's error and should reference the 360-foot contour of Lake Murray. (Order dated July 20, 2015 P. 5; R. ____).

By Corrective Deed dated September 24, 2014, recorded in the Land Records on October 2, 2014 in Deed Book 11431 at Page 18 ("Corrective Deed"), Hamilton Duncan conveyed to Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan, the following described property (the "Respondent's 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 150, being more particularly shown on the plat above referred to.

(Corrective Deed; R. ___). A. Charles Craft, III and Manita B. Craft previously conveyed Respondent's Property to Hamilton Duncan and Christine A. Duncan by deed dated June 28, 2002, recorded in the Land Records on July 1, 2002 in Book R 680 at Page 383 ("Duncan Deed")[1]. (Duncan Deed; R. ___). Mr. and Mrs. Craft acquired the Respondent's Property by deed of Jay Clark Case dated December 15, 1995, recorded in the Land Records on December 19, 1995 in Deed Book 1293 at Page 688 ("Craft Deed") (Craft Deed; R. ___). Jay Clark Case acquired Respondent's Property from Woodberry Utilities, Inc. by deed dated July 28, 1976, recorded in the Land Records on August 3, 1976 in Book D393 at Page 147 ("Case Deed"). (Case Deed; R. ___). The legal description in the Case Deed is as follows:

> 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, to be recorded[2]. Said lot, according to said plat is bounded and measures as follows, to-with: 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

[1] The Duncan Deed contains a scrivener's error in the legal description of the Easement. (Order dated July 20, 2015 P. 4; R. ___). Appellant has not appealed this ruling.

[2] Said plat was subsequently recorded in the Land Records in Plat Book Y at Page 1910. (*Plaintiff's Trial Exhibit 24*; R. ___).

measures 208' feet; and on the Northwest by lands of Woodberry Utilities, Inc. whereon it measures 208' feet; be all measurements a little more or less.

During the period of Mr. Case's ownership of Respondent's Property, Site Consultants, Inc. prepared a plat for him dated April 25, 1988, recorded in the Land Records on May 3, 1988 in Book 52 at Page 1316 (the "Site Consultants Plat"). The Site Consultants Plat shows the Easement extending from the Respondent's Property line to waters of Lake Murray. (Trans. P. 23, L. 22-25, P. 24, L.1-10; R. ___).

By deed dated August 11, 1995, recorded in the Land Records on August 14, 1995 in Deed Book 1273 at Page 242 ("Appellants' Deed"), Silver Pointe Cove Associates, Inc. conveyed to Roy R. Drasites and Elizabeth P. Drasites certain real property more particularly described as follows ("Appellants' 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[3], to be recorded and having such metes and bounds as shown on said latter plat.

Silver Point Cove Associates, Inc. traces its ownership to Woodberry Utilities, Inc. *See (Plaintiff's Trial Exhibits 4 & 5;* R. ___).

As shown above, Appellants took title to Appellants' Property by reference to Plat Book 55 at Page 7241 (the "Silver Pointe Plat"). The Silver Pointe Plat shows the Easement burdening the entire length of Appellants' Property's southern boundary line. *See* (Silver Pointe Plat; R. ___); (Trans. P.23, L.12-21; R. ___). Appellants also had commissioned the Drasites Acquisition Plat, which also shows the Easement burdening the entire length of Appellants'

[3] Said plat was subsequently recorded in the Land Records in Plat Book 55 at Page 9030 ("Drasites Acquisition Plat"). (*Plaintiff's Trial Exhibit 22;* R. ___).

Property's southern boundary line. *See* (Drasites Acquisition Plat; R.___)(Trans. P. 24, L. 11-25, P. 25, L. 1-4; R. ___). Appellants also commissioned that certain "Plat of Survey Prepared For Roy R. Drasites & Elizabeth P. Drasites" dated December 15, 1997 prepared by Bostick Surveying (the "1997 Plat"). The 1997 Plat shows the elevations and yet continues to show the Easement extending to the edge of Appellants' Property.

At trial, both Mr. Dennis Johns, PLS and Larry W. Smith, PLS were qualified as experts in the field of surveying without objection. (Trans. P. 18, L. 6; R. ___); (Trans. P. 59, L. 9-10; R. ___). Both Mr. Johns and Mr. Smith testified that, in their expert opinion, the Easement burdens the entire southern property line of Appellants' Property. (Trans. P. 26, L. 12-16; R. ___) (Trans. P. 64, L. 17-18; R. ___). Mr. Smith explained on cross-examination that Woodberry Utilities, the grantor of the Easement Deed, gave an easement across its entire tract (Appellant's Property) because Woodberry Utilities did not own beneath the 360 contour. (Trans. P. 65, L. 3-19; R. ___). Mr. Smith testified that, in his expert opinion, the Easement's purpose was to access Lake Murray and that the easement goes to the waters of Lake Murray, which is the 360 contour. (Trans. P.64, L. 21-23; R. ___)(Trans. P. 71, L. 6-10; R.___). As Mr. Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program testified, normally easements such as the one at issue in this case are to access Lake Murray. (Trans. P. 94, L. 18-20; R. ___).

Appellants offered Carl W. Bostick "to give an expert opinion on the 360 contour." (Trans. P. 102, L. 1-2; R. ___). Mr. Bostick did not testify as to where the Easement ends nor could he identify to a reasonable degree of surveying certainty the location of the 360 contour at the time of the Easement Deed, 1976. (Trans. P. 108, L. 15-17; P. 109, L. 11-12; R. ___). Mr. Bostick prepared a plat dated February 5, 2014 which showed the Easement extending to the

edge of the Appellants' Property. (Trans. P. 107, L. 2-25; R. ___) (*Plaintiff's Trial Exhibit 20*; R. ___). As he testified, at that time, he thought the Easement ran to the lake. (Trans. P. 114, L. 4-9; R. ___). Mr. Bostick could not identify the location of the Appellants' Property line with Lake Murray, and testified "I did a '97 and I tied in some irons that – I wasn't a hundred percent sure." (Trans. P. 112, L. 23-24; R. ___).

When SCE&G conveyed to adjoining landowners the fringe lands, they conveyed to the 360 contour. (Trans. P. 90, L. 12-19; R. ___). As Mr. Boozer testified, it is rare that a property owner owns land beneath the 360 contour of Lake Murray. (Trans. P. 91, L. 17-22; R. ___).

On cross-examination, Mr. Johns was asked whether the Easement Deed contained any ambiguity to which he repeatedly replied no, that in a surveyor's mind there is no ambiguity in the Easement Deed. (Trans. P. 28, L. 24-25, P. 29, L. 1-6; R. ___).

The 360 contour of Lake Murray can be changed by among other things, erosion, excavation, or construction. (Trans. P. 20, L. 2-21, P. 92 L. 3-14, P. 93, L. 11-16; R. ___).

There was no evidence presented at trial of a dirt road having been around Appellant's Property, other than a reference on a Woodtrail subdivision plat. The Woodtrail subdivision was never implemented and Appellants presented no evidence of any deeds referencing the Woodtrail Subdivision Plat. (Trans. P. 110, L. 21-25; P. 111 L. 1-3; R. ___). Mr. Johns testified there is no evidence of a dirt road around the area of Appellants' Property. (Trans. P. 56, L. 9-10; R.___). Mr. Smith testified that the reason the alleged road did not show up on other plats is "undoubtedly it wasn't there." (Trans. P. 72, L. 25; R. ___). Mr. Boozer testified that if there were a road beneath the 360 contour, no one could use it at the time the Easement was conveyed. (Trans. P. 95, L. 24-25; R. ___). Appellants moved into evidence the property itself and the Court visited the site on April 29, 2015. (Trans. P. 119, L. 1-25, P. 120 L. 1-7; R.___). In Judge

Strickland's Order dated July 20, 2015, Judge Strickland based his finding of fact that no road existed in 1976 in part upon his view of the Easement, the Appellants' Property and the Respondent's Property. (Order dated July 20, 2015, 8; R. ___).

STANDARD OF REVIEW

While the determination of the existence of an easement is a question of fact in a law action, the question of the extent of an easement is an action in equity. *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997). Similarly, if the action is viewed as interpreting a deed, it is an equitable matter. *Slear v. Hanna,* 329 S.C. 407, 410, 496 S.E. 2d 633, 635 (1998). In an equitable proceeding, an appellate court may find facts in accordance with its own view of the preponderance of the evidence; however, the broad scope of review does not require the court to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their creditability. *South Carolina Dept. of Transp. v. M & T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 653-54, 667 S.E.2d 7, 12 (Ct. App. 2008). The Appellant is not relieved of the burden of convincing the appellate court that the trial court committed error in its findings. *Rhett v. Gray*, 401 S.C. 478, 489, 736 S.E.2d 873, 879 (Ct. App. 2012). If an appellate court chooses to find facts in accordance with its view of the evidence, it must state such findings of fact and the reasons for those findings. *Dearybury v. Dearybury,* 351 S.C. 278, 283, 569 S.E.2d 367, 369 (2002).

However, the construction of a clear and unambiguous deed is a question of law for the Court. *Hunt v. Forestry Comm'n*, 358 S.C. 564, 568, 595 S.E.2d 846, 848 (Ct. App. 2004). "If the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence." *Id.* "While the trial court's findings of fact in a nonjury action at law should not be disturbed on appeal unless they are

without evidentiary support, a reviewing court is free to decide questions of law with no particular deference to the trial court." *Id.*, 358 S.C. at 569, 595 S.E.2d at 848-9.

ARGUMENTS

I. DID THE MASTER-IN-EQUITY ERR IN RULING THAT THE PURPOSE OF THE EASEMENT WAS TO ACCESS LAKE MURRAY AND BURDENS THE APPELLANTS' ENTIRE SOUTHERN PROPERTY LINE WHERE THE EASEMENT EXPRESSLY MENTIONS A TERMINUS ON A CONTOUR OF LAKE MURRAY?

The Master-in-Equity committed no error in ruling that the Easement is for the purpose of accessing Lake Murray and that the Easement burdens the entire length of Appellants' southern property line.

"An easement is a right which one person has to use the land of another for a specific purpose." *Steele v. Williams*, 204 S.C. 124, 28 S.E.2d 644, 647 (1944). The character of an express easement is determined by the nature of the right and intention of the parties creating it. *Lighthouse Tennis Club Village Horizontal Prop. Regime LXVI v. South Island Public Service Dist.*, 355 S.C. 529, 534, 586 S.E.2d 146, 148 (Ct. App. 2003). To determine the purpose of an easement, a court must evaluate the intention of the parties when the easement was granted." *Id.* "In doing so, the clear and unambiguous language in grants of easements must be construed according to terms which parties have used, taken, and understood in their plain, ordinary, and popular sense." *Id.* (internal citations and quotations omitted).

In construing a deed, the intention of the grantor must be ascertained and effectuated. *K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 682 S.E.2d 252, 262 (2009). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Id.* Such intention must be found within the four corners of the deed; however when the intention is not expressed accurately in the deed

evidence *aliunde* may be admitted to supply or explain it. *Id.* "The instrument is not thereby varied or contradicted but is explained or corrected." *Id.* If the language of an easement is not clear and creates ambiguity in any respect, all surrounding circumstances, including the construction which the parties have placed on the language, may be inquired into and taken into consideration. *Smith*, 312 S.C. at 466, 441 S.E.2d at 335. However, if there is any ambiguity in a deed, the ambiguity in the deed must be construed against the grantor. *Ward v. Woodward*, 287 S.C. 343, 345, 338 S.E.2d 347, 348 (1985); "A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *K & A Acquisition*, 682 S.E.2d at 262; *Rhett*, 401 S.C. at 492, 736 S.E.2d at 881. Therefore, if there is any ambiguity in the Easement, it must be construed against the Appellants. *See also Collins v. Griffin*, 2006 WL 7287897 at *4 (December 19, 2006) (holding that an ambiguity in an easement deed is construed against the grantors of the easement deed and their successors in title).

Appellants rely on *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423 (1981), for the proposition that "[i]f 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." (Appellants' Brief at 14). *Myrtle Beach Lumber* involved the situation in which a supplier drafted a contract, not a deed, which authorized the owner to make checks payable to the contractor and the supplier. *Id.* 276 S.C. at 6, 274 S.E.2d at 425. The supplier, who knew the contractor was financially unstable, failed to submit invoices for materials used in the construction of the owner's residence. *Id. Myrtle Beach Lumber* does not involve a property conveyance or an easement. Because of this, the Court there correctly held that the contract should be construed against the drafter, the supplier. In the present case, the rule set forth in *Ward* is applicable and Appellants' reliance on *Myrtle Beach Lumber* is misplaced.

Furthermore, the Appellants failed to present any evidence as to the identity of the Easement drafter.

Appellants contend that the Easement contains an ambiguity in that the term "360 contour" is not defined. "An ambiguous agreement is one capable of being understood in more ways than one, and agreement obscure in meaning through indefiniteness of expression or containing words having a double meaning." *Smith v. Comm'rs of Pub. Works of City of Charleston,* 312 S.C. 460, 465, 441 S.E.2d 331, 335 (Ct. App. 1994). However, "360 contour" must be understood in its plain, ordinary and popular sense. *Lighthouse Tennis Club, supra.*

Appellants have not offered another meaning for the term "360 contour." They have not demonstrated that the term is capable of being understood in more than one way or that it is indefinite in its expression. The only evidence presented is that the term "360 contour" means the 360 ft. contour of Lake Murray as is stated in the Easement Deed. Appellants contend that because a plat is not referenced in the Easement Deed there is ambiguity in the Easement Deed. However, in this case, the parties agree that 360 contour of Lake Murray means the 360 contour of Lake Murray as it existed in 1976. Simply stated, there is no ambiguity in the Easement Deed and the fact that no plat is referenced does not create an ambiguity. Furthermore, in the mind of a surveyor, there is no ambiguity in the Easement Deed and the location and extent of the Easement can be located by a surveyor. (Trans. P. 28, L. 24-25; P. 29, L. 1-6; R. ___).

Appellants have not offered any evidence or testimony as to the location of the 360 ft. contour in 1976. Their expert witness, Mr. Bostick, testified that he did not know where the 360 contour was in 1976. (Trans. P. 109, L. 11-12; R. ___). However, Mr. Johns and Mr. Smith testified that the 360 contour was the property line of Appellants' Property with Lake Murray and that the Easement burdens the entire length of Appellants' southern property line. (Trans. P.

26, L. 12-16; R. ___) (Trans. P. 64, L. 17-18; R. ___). Moreover, when SCE&G conveyed the fringe lands to the adjoining property owners, they conveyed to the 360 contour. (Trans. P. 90, L. 12-19; R. ___). There has been no evidence of any conveyances affecting the Appellants' property line with Lake Murray. The only reasonable interpretation of the Easement is that the Easement burdens the entire southern property line of Appellants' Property meaning to the 360 contour, the Appellants' boundary with Lake Murray.

Appellants have attempted to create an ambiguity based on the Woodtrail Plat, Defendant's Trial Exhibit 13 (hereafter the "Woodtrail Plat") which purports to show a dirt road beyond Appellants' Property. (Woodtrail Plat; R. ___). Even this argument is flawed because the Woodtrail Plat shows the Easement burdening the entire length of Appellants' Property's southern boundary. *Id.* Even if taken as true, Appellants' argument leads to the unescapable conclusion that the Easement burdens the Appellants' Property's entire southern boundary. However, the Woodtrail Plat may not vary or contradict the Easement Deed. *K & A Acquisition*, 682 S.E.2d at 262. It may only explain or correct the Easement Deed. *Id.* The Easement Deed specifically states "extending from the property line of (Respondent's Property) to the 360 (foot) contour **of Lake Murray**." (Easement Deed; R. ___) (emphasis added). Implicit in this language is that the Easement is to access Lake Murray. The Easement references Lake Murray, making it inferable that the grantor's intent in granting the Easement was for the purpose of giving access to Lake Murray. The Easement Deed was granted well before the Woodtrail Plat. Any ambiguity which the Woodtrail Plat may create contradicts the language of the Easement Deed and should therefore be disregarded.

Likewise, Appellants contend that the Easement is for the purpose of reaching Johnson Marina Road via the alleged dirt road based on the Woodtrail Plat. Appellants further contend

on appeal that the dirt road is shown on a 1960 Plat, *Plaintiff's Exhibit 21.* (Appellants' Brief at 10)[4]. As Mr. Johns testified, the Woodtrail Plat shows that the alleged dirt road is taken from a County tax map, not that it was actually in existence in 1981 or that it was ever actually there. (Trans. P. 37, L. 19-20; P. 56, L. 9-10; R. ___). Mr. Smith testified that the Woodtrail Plat states the road was taken from the tax maps, that there are often problems with tax maps and that the 1960 fringe land Plat does not show a road. (Trans. P. 73, L. 11-17, P. 75, L 13-25, P. 76, L. 1-7; R. ___). The Easement Deed specifically mentions Lake Murray, leading to the inference that its purpose was to reach Lake Murray. Mr. Johns and Mr. Smith both testified that the Easement's purpose was to reach Lake Murray. . (Trans. P. 26, L. 12-16; R. ___) (Trans. P. 64, L. 17-18; R. ___). Appellants' witness, Mr. Boozer, testified that, in his experience, easements such as the one at issue in this case are to reach Lake Murray. (Trans. P. 94, L. 18-20; R. ___). Only Mr. Bostick, after being asked by the Appellant himself to change his February 5, 2014 plat, testified that the Easement is for the purpose of reaching Johnson Marina Road.

Even if the Court finds "360 contour" ambiguous, the court must construe the Easement against the grantor, Appellants' predecessor-in-title and find that the Easement burdens the entire southern boundary of Appellants' Property and that the purpose is to reach Lake Murray. *See K & A Acquisition, supra; Ward, supra; Collins, supra.* As set forth in more detail above, even considering the evidence presented by Appellants, such evidence fails to demonstrate the Easement does not burden their entire southern boundary or that the Easement is for the purpose of reaching Johnson Marina Road. This theory does not make logical sense. As Mr. Boozer testified, even if the road were in existence in 1976, no one could use it at the time the Easement was conveyed. (Trans. P. 95, L. 24-25; R. ___). Under Appellants' theory, the Easement, at the

[4] This argument of fact was not raised to the trial court until Appellants' Rule 59(e) Motion.

time it was granted would have served no purpose at all. It could not be used for any purpose, much less the purpose Appellants have attributed to it.

Furthermore, the Woodtrail Plat shows the Easement extending to the southern boundary of Appellants' Property. Appellants' theory is self-contradictory, has no evidence to support it, and is illogical.

The Easement Deed is unambiguous and should be interpreted to give effect to the grantor. As stated in the Easement Deed, the Easement runs from Respondent's Property to the 360 contour of Lake Murray. The surveyors all agreed at one point that the Easement burdened the entire southern property line of Appellants' Property. The language of the Easement itself infers that the intent of the grantor was to give access to Lake Murray. If the Court finds the Easement Deed contains an ambiguity, that ambiguity is construed against the grantor, Appellants' predecessor in title. Therefore, the Master did not err in his ruling that the purpose of the Easement is to reach Lake Murray and that the Easement burdens the entire southern boundary of Appellants' Property. The Master should be affirmed.

II. DID THE MASTER-IN-EQUITY ERR IN RULING THAT RESPONDENT MAY UTILIZE THE EASEMENT FOR VEHICULAR USE TOWING LIGHT WATERCRAFT?

a. Appellants' argument is not preserved for appellate review, or has been abandoned.

This issue was raised for the first time on Appellants' Rule 59(e) motion. Appellants failed to raise the issue of vehicular use during the merits hearing, therefore this argument is not preserved for appellate review. *See Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) ("a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not."); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party

cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial."); *Small v. Hunt*, 98 F.3d 789, 798 (4th Cir. 1996) (requiring a party seeking to present new evidence in a Rule 59(e) motion to "produce a legitimate justification for not presenting the evidence during the earlier proceeding"); 11 Wright et al., FEDERAL PRACTICE AND PROCEDURE § 2810.1 ("The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment"); see also *In re Reese*, 91 F.3d 37, 39 (7th Cir. 1996) ("A motion under Rule 59(e) is not authorized to enable a party to complete presenting his case after the court has ruled against him.").

Moreover, although Appellants assert the Master erred in ruling the Easement is for vehicular use, they cite no case law or citations in their argument. Therefore Appellants have abandoned this argument. *See MI Co., Ltd. v. McLean*, 325 S.C. 616, 627, 482 S.E.2d 597, 603 n.6 (Ct. App. 1997).

b. The Easement is for vehicular use, including towing light watercraft

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

easement and the servient tenement may have reasonable enjoyment. The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more." *Id.*

Appellants have no standing to enforce the Lake Murray Shoreline Management Plan. "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Bank of America, N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013). Any disagreement over Respondent's rights below the 360 contour of Lake Murray and any enforcement of the Lake Murray Shoreline Management Plan would be between Respondent and SCE&G, not Respondent and Appellants.

The width of the Easement (20') is far larger than is necessary for solely pedestrian access. It is inferable from its width that the Easement was for vehicular access, including by vehicle towing light watercraft. The use of the Easement by vehicle towing light watercraft is incident and necessary to the Easement's proper use and enjoyment. It is not an additional burden on the Appellants' Property, the servient estate.

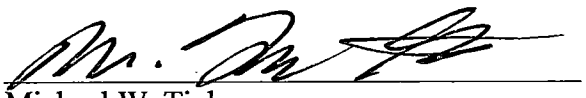
As to Appellants' contention that the Lake Management Shoreline Management Plan does not permit a boat dock or boat ramp on the Easement, at no point has Respondent sought to construct a boat ramp or boat dock on the Easement. This action does not concern the construction of a boat ramp or boat dock on the Easement.

The use of the Easement by vehicle towing light watercraft is not an additional burden on Appellants' Property and is as little burdensome as was contemplated by the grant of the Easement. The Easement is well over the width needed for purely pedestrian access. Appellants do not have standing to enforce the Lake Murray Shoreline Management Plan and any disagreement over the enforcement of that plan would be between Respondent and SCE&G, not Respondent and Appellants. Therefore, this Court should affirm the Master's Ruling.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court affirm the Master's rulings.

Respectfully submitted,



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