

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

James O. Spence, Master in Equity

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Appellate Case No.: 2016-000588

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Published Opinion No. 5366  
(S.C. Ct. App. filed December 9, 2015)

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**SC SUPREME COURT**

David R. Gooldy,

Petitioner,

vs.

The Storage Center – Platt Springs, LLC,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## INTRODUCTION

This dispute is about the existence of an implied easement. Petitioner David R. Gooldy (“Gooldy” or “Petitioner”) seeks review of the Court of Appeals’ decision on existence of an implied easement. This issue does not merit review by this Court. *See* Rule 242(b), SCACR (“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.”). There is no novel question of law; the decision was unanimous; there is no conflict with any of this Court’s decisions with respect to the issues raised by Petitioner; and there are no constitutional issues or federal questions. *See id.*

The Court of Appeals relied on well-established South Carolina law to conclude that the incorporation of a plat into a deed for descriptive purposes does not create a presumption of an implied easement or reveal that the parties had any intent to create an implied easement. The Court of Appeals correctly refused to consider a handwritten notation outside of the surveyed property’s boundary lines on the incorporated plat to constitute any intent to create an implied easement. The incorporated plat conveyed the property inside the boundary lines – nothing more, nothing less. The law in the State is clear on the creation of implied easements, and the issues raised by Petitioner are not deserving of this Court’s review. *See* Rule 242(b), SCACR. Therefore, the Petition for Writ of Certiorari should be denied.

## COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. **Did the Court of Appeals correctly rely on precedent established in *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965) and *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 635 S.E.2d 660 (Ct. App. 2006) to hold that the deed referenced the plat merely for descriptive purposes, and therefore, did not support the Master's finding that Petitioner was entitled to a presumption of an implied easement?**
  
- II. **Did the Court of Appeals correctly conclude there was no evidence to support the finding of an implied easement when (1) the uncontroverted evidence establishes that the parties did not intend to create an easement; (2) the deed does not express the intent to create an easement because the deed incorporated the plat solely for descriptive purposes; and, (3) the road that Petitioner argued constituted the easement never existed?**

## COUNTER-STATEMENT OF THE CASE

Petitioner Gooldy and Respondent The Storage Center – Platt Springs, LLC (“The Storage Center” or “Respondent”) are owners of adjacent property located on South Lake Drive in Lexington County, South Carolina. Prior to the filing of this lawsuit, Gooldy was using The Storage Center’s land that abuts the southern side of Gooldy’s Parcel as a driveway. On February 1, 2010, Gooldy filed a lawsuit against The Storage Center after The Storage Center closed off its property, thereby preventing Gooldy from using it as a driveway. (App. pp. 35 - 41.) In his lawsuit, Gooldy asserted four causes of action: (1) Declaratory Judgment, Easement by Implication or Estoppel, (2) Declaratory Judgment, Easement by Prescription, (3) Estoppel – Temporary and Permanent Injunctive Relief, and (4) Negligence/Gross Negligence/Intentional Act, Denial of Property Rights. (*Id.*) Gooldy argues that he is entitled to an easement over The Storage Center’s property because his deed, along with the deeds of his predecessors-in-title, references a plat that contains a notation that says “50’ road” outside of his boundary lines of the property surveyed on the plat. (App. pp. 37 - 40.)

After a bench trial, the Master-in-Equity agreed with Gooldy and concluded (1) that Gooldy had access over the “road that borders the Plaintiff’s property on the southern side”; (2)

that Gooldy was entitled to \$2,500 for lost income; and (3) that Gooldy was entitled to \$7,500 in punitive damages because The Storage Center prevented Gooldy access to the strip of land. (App. pp. 3 - 22.) The Master-in Equity denied The Storage Center's motion to alter or amend the judgment. (App. pp. 23 - 32.) The Storage Center appealed both the trial order and the order denying the motion to reconsider.

The Court of Appeals reversed, holding that (1) there was no presumption of an implied easement; (2) no evidence to support a finding of an implied easement; and (3) that no damages should be awarded. (App. pp. 540 - 548.) Gooldy filed a Petition for Rehearing, which was denied. (App. p. 575.) Gooldy's Petition for Writ of Certiorari followed.

### **STATEMENT OF THE FACTS**

#### **I. The Acquisition of Parcels by Gooldy and The Storage Center**

Gooldy's property consists of approximately 0.68 acres, ("Gooldy Parcel") and was acquired by him on January 24, 2002 (App. pp. 375 - 376.). Gooldy operates a chiropractic practice from this location. (App. pp. 115:16-18.). The Storage Center owns property that surrounds Gooldy's Parcel on three sides ("Adjoining Property"). The deed conveying the property to Gooldy describes the property being conveyed by reference to a plat entitled "Plat Prepared for James Loflin" ("Loflin Plat"). (App. pp. 375-376.) The Loflin Plat was prepared on December 10, 1985 and was recorded in the Office of the Register of Mesne Conveyances for Lexington County on September 11, 1986 in Plat Book 212-G at Page 204. (App. p. 377.) The Loflin Plat contains the hand-written notation "50' ROAD" on a portion of the Adjoining Property.<sup>1</sup> (*Id.*) The purported "road" is not surveyed and its beginning, end, boundaries and other dimensions are

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<sup>1</sup> The Loflin Plat does not depict all of the Adjoining Property or any of its boundaries except those shared with the Gooldy parcel.

not shown on the Loflin Plat. (*Id.*) At the time the Loflin Plat was recorded, the Adjoining Property was owned by Congaree Associates, which was also the grantor of the property to Loflin that is now the Gooldy Parcel. (*See id.*; App. pp. 394 - 395.) The Adjoining Property is now owned by The Storage Center. (App. pp. 392 - 393.) The Loflin Plat was only a survey of the property being conveyed to Loflin, *i.e.* the Gooldy Parcel, and was not a survey of the surrounding property. (App. p. 212:8-14; App. p. 295:15-17.) Every deed in Gooldy's chain of title describes the property by reference to the Loflin Plat. (App. pp. 379 - 391.)

In 2007, Congaree Associates sold the Adjoining Property to The Storage Center. (App. pp. 392 - 393.) Prior to the sale, Frank Strasburger of Congaree Associates had the Adjoining Property surveyed and a plat prepared. The result was the "Strasburger Plat," which was drawn by Charles Meeler on October 26, 2006 and recorded in the Office of the Register of Deeds for Lexington County on October 27, 2006 on Slide 918 at Page 2. (App. pp. 396-399.)<sup>2</sup> The Strasburger Plat does not show any road adjacent to the Gooldy Parcel or anywhere else on the Adjoining Property, and does not contain any references to an easement across the Adjoining Property in favor of Gooldy or anyone else. (*Id.*) When conveyed by Congaree Associates to The Storage Center, the Adjoining Land was described by reference to the Strasburger Plat, which was incorporated for descriptive purposes into the deed from Congaree Associates to The Storage Center. (App. pp. 392 - 393.)

## **II. Dispute Arises Between Gooldy and The Storage Center**

Prior to the filing of this lawsuit, Gooldy was using The Storage Center's land that abuts the southern side of Gooldy's Parcel as a driveway. The present dispute arose when The Storage Center informed Gooldy that he could not use The Storage Center's property to access his parcel.

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<sup>2</sup> Unlike the Loflin Plat, the Strasburger plat was prepared for Congaree Associates.

The Storage Center attempted to settle the property dispute with Gooldy through a shared access agreement and a cash payment. (App. pp. 338:6 – 340:21.) These efforts to settle continued for approximately two years; however, Gooldy never agreed to any of The Storage Center’s offers. (App. pp. 340:22 – 341:5.)

After its several attempts to resolve the matter, The Storage Center informed Gooldy in July 2009 that he did not have permission to use its land as a driveway and installed a wire fence to prevent entry. (App. p. 125:3-5; App. p. 166:3-11; App. p. 341:6-14.) At all times, The Storage Center was acting under its good faith belief that it had the unfettered right to control all of the property it owned. (App. p. 356: 8-12.) Moreover, The Storage Center did not prevent Gooldy from accessing his property, as was recognized by the circuit court when it denied Gooldy’s motion for preliminary injunction. (App. p. 1.) Gooldy always has had the ability to access his property from its northern side, as well as directly from Highway 6. (App. pp. 172:22 – 173:1.)

### **III. Evidence Relating to the Alleged 50’ Road and Easement**

Gooldy contends that he is entitled to an easement over the “road” shown on the Loflin Plat. But there is no fifty foot wide road adjoining the Gooldy Parcel, and the Loflin plat does actually depict such a road. (App. p. 404; App. p. 378; App. pp. 160:14- 161:2) Nor did Congaree Associates intend to grant Loflin or his successors in title any right to use any portion of the Adjoining Property for ingress, egress, or any other purpose. (App. p. 224:16-20.) It is undisputed that Congaree Associates did not intend the reference to the Loflin Plat in the deed to James Loflin, to create an easement. (*Id.*) The deed from Congaree Associates to Loflin referred to the Loflin Plat only for the purpose of describing the property being conveyed to Loflin, and only conveyed the property within the boundary lines shown on the Loflin Plat, *i.e.* the Gooldy Parcel. (App. pp. 228:8 – 229:13; App. pp. 394 – 395.) The subject of the “road” or any easement rights was never

even mentioned or discussed. McGee testified: “Let me make this clear. I never discussed that road with Mr. Loflin or the successors to him. It never came up. Nobody ever asked me.” (App. p. 224:12-15.) McGee’s testimony is unequivocal that by delivering the deed Loflin to be recorded, Congaree Associates did not intend to create an easement. (App. pp. 228:13 – 229:13.) Additionally, Congaree Associates would not have incorporated the Loflin Plat in the legal description of the deed to Loflin if it knew that one of Loflin’s successors would claim rights to any easement in connection with the Gooldy Parcel. (App. p. 229:17-21.)

In addition to McGee’s testimony, plats of the Adjoining Property prepared for Congaree Associates subsequent to the conveyance to Loflin also establish that there was never an intent to create or convey any easement rights to Loflin and his successors. Robert Collingwood, the same surveyor who prepared the Loflin Plat, drew plats of the Adjoining Property for Congaree Associates in 1998 and 2002. (App. pp. 399 – 401) Those plats, which reflect surveys of the property of Congaree Associates itself, do not show any road, and do not contain any reference to any easements, rights of way, or any other rights favoring the owner of the Gooldy Parcel. (*Id.*) In fact, the 2002 plat was revised on March 3, 2003 (nearly one year after Gooldy purchased his land) specifically to show easements. (App. p. 403.) Again, Collingwood did not make any references to the alleged road or easement on the revised 2002 plat. (*Id.*) Additionally, both the Strasburger Plat and the Lexington County TMS map show no references to the alleged 50’ road. (App. pp. 396-398; App. p. 402.)

The 1998 and 2002 plats prepared for Congaree Associates were recorded in the Lexington County records. On the other hand, the only recorded plat containing any reference to the alleged road is the Loflin Plat. Unlike the 1998 and 2002 plats, the Loflin Plat was not a survey of Congaree Associates’ property, was not a survey of the road, and was not prepared for Congaree

Associates. Collingwood also prepared a proposed plat drafted prior to the Loflin Plat. (App. p. 405.) But unlike the 1998 and 2002 plats, this proposed plat (a) never received final approval from Lexington County, (b) was never recorded, and (c) reflects a contemplated project that Congaree Associates did not pursue or construct. Congaree Associates never subdivided its land or sold lots referencing a recorded subdivision plat. (App. p. 206:16-21; App. p. 214:24-25.) In sum, Congaree Associates never caused a plat to be prepared and recorded that contained any reference to a 50' road.

The absence of any intention by Congaree Associates to create a road is most starkly evidenced by the fact that no road has ever existed. Neither Congaree Associates, nor any subsequent owner ever caused a road to be built. (App. pp. 208:25-209:3; App. p. 209:20-25; App. p. 232:17-19; *see also* App. p. 404.) Consequently, no road existed at the time Gooldy purchased his parcel. (App. pp. 160:14-161:2.) None of these recorded plats shows a road. Charles Meeler, who drew the Strasburger Plat and has been a registered surveyor for twenty-four years (App. p. 244:17-20), testified as follows:

In my professional opinion, there was no road. Lexington County required road names. I couldn't find a – I couldn't find a name for that alleged road, so, you know, to my knowledge and all the research work I did, there was no road existed there. South Carolina DOT had no record of a road there. Lexington County had no record of a road there. So I just felt like that was a part of [Congaree Associates'] property.

(App. p. 249:13-22.) Meeler's manifestly correct conclusion that no road existed was based on his review of the Loflin Plat, the 1998 and 2002 plats drawn by Collingwood, and Lexington County's TMS map that showed no road. (App. p. 265: 14-18; App. p. 271: 9-16.)

The lack of intent to create or convey any easement rights is evidenced by (1) the uncontroverted testimony of Carroll McGee of Congaree Associates that no easement was intended and none was ever even discussed, (2) the subsequent plats drawn by Collingwood (the

preparer of the Loflin Plat), Meeler, and Lexington County, and (3) the fact that no road ever existed.

#### **IV. Expert Testimony of Rosser W. Baxter Jr.**

Rosser W. Baxter Jr. is The Storage Center's well qualified expert. Baxter has been a surveyor for forty-seven years and a registered surveyor for thirty-three years. (App. p. 275:9-10; App. p. 280:2-9). In preparation for his testimony in the case, Baxter reviewed all of the relevant plats,<sup>3</sup> deeds,<sup>4</sup> and documents. Baxter also visually inspected the property (App. pp. 287:12 – 288:14; App. pp. 305:14 - 307:18). Based upon this extensive body of information, as well as his forty-seven years of experience as a surveyor, Mr. Baxter testified as follows:

1. The notation of the "50' Road" on the Loflin Plat is not a survey of a road (App. p. 291:14-17; App. p. 296:21-23; App. p. 302:19-21), in part, because it fails to show any dimensions of the road (App. p. 301:14-17).
2. The "50' Road" notation on the Loflin Plat did not create a road (App. p. 291:18-23), and it was an error for the Loflin Plat to have included a reference to the alleged 50' Road when such a road never existed (App. p. 301:7-13; App. p. 312:12-15).
3. The Loflin Plat fails to meet surveying practices and standards by including the "50' Road" notation when it is not part of the Gooldy Parcel and such a road did not exist (App. pp. 302:19 – 303:2).
4. The "50' Road" notation on the Loflin Plat does not mean that, as a matter of surveying principles that a 50' road actually exists on the property (App. pp. 291:24 – 292:3).

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<sup>3</sup> App. p. 377 & App. p. 396 -398, App. p. 399-401, App. p. 403 & App. p. 404.

<sup>4</sup> App. p. 379 - 391 & App. p. 392 – 393.

5. The Loflin Plat is only a survey of the 0.68 acres conveyed to Loflin from Congaree Associates and not a survey of anything outside the 0.68 acres (App. pp. 292:24 – 293:10; App. p. 294:3-6).
6. The Loflin Plat is an individual lot plat, not a subdivision plat (App. p. 296:8-13).
7. The Loflin Plat does not indicate whether the alleged road is public or private (App. p. 297:23-25).
8. The Loflin Plat does not show any access from the Gooldy Parcel to the alleged 50' road (App. p. 298:8-14) and creates no rights of access in the owner of the Gooldy Parcel (App. p. 315:2-7) and that even if the alleged road existed, the Loflin Plat does not establish that the owner of the Gooldy Parcel had the right to use the road (App. p. 298:15-18).
9. The Loflin Plat is the only public record he viewed that made any reference to an alleged 50' road (App. p. 308:13-22).

Regarding further insufficiencies contained in the Loflin Plat, Baxter testified that the Loflin Plat does not identify Congaree Associates as the owner of the Adjoining Property. (App. pp. 298:19 – 299:21.) Baxter further testified that it is improper for a surveyor to reflect conditions on property that adjoins the property being surveyed. (App. p. 300:3-14.) Gooldy offered no testimony – expert or otherwise – to dispute Baxter's expert opinion testimony.

### ARGUMENT

The Court of Appeals correctly held that the Loflin Plat was incorporated into the deed solely for descriptive purposes, and therefore, no presumption of an easement arose in Gooldy's favor. The Loflin Plat served to show the 0.68 acres conveyed – not to incorporate any easement or other encumbrance outside of the boundary lines for the 0.68 acres. South Carolina law is clear

that easements shown on a plat do not become part of the deed when the plat is incorporated for the purpose of describing the property conveyed. *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965).

Second, the Court of Appeals correctly held that there was no evidence to support the conclusion that Congaree Associates and Loflin intended to create an implied easement. Congaree Associates and Loflin attested there was no such intent. The deed, as a matter of law, reveals there was no intent. Finally, the fact that no road ever existed shows there was no intent to create an implied easement. For these reasons, the Petition for Writ of Certiorari should be denied.

**I. The Court of Appeals Correctly Held that the Deed Incorporated the Loflin Plat Solely for Descriptive Purposes, and Did Not Convey An Easement.**

Incorporation of a plat into a deed in order to describe the property does not serve to convey or incorporate easements or other encumbrances on the plat. To the contrary, “[w]hen a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed.” *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006). Thus, while the deed incorporates the plat for the purpose of showing the boundaries of the property, it does *not* incorporate the plat for any other purpose.

**A. Lancaster and Bennett Are Controlling Authorities.**

The South Carolina Supreme Court addressed precisely this issue in *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965). In *Lancaster*, a deed referenced a plat that depicted a publicly recorded gas pipeline easement that ran across the owner’s property. *Id.* at 466-67, 144 S.E.2d at 210. The issue was whether the depiction of the easement on the plat that was incorporated into the deed was sufficient to give notice to the purchaser of the existence of the easement. *Id.* at 466, 144 S.E.2d at 210. The supreme court held that while “the reference to the

recorded plat made it a part of deed *for the purpose of showing the boundaries, metes, courses, and distances of the property conveyed,*” *id.* at 469, 144 S.E.2d at 211 (emphasis added), it did not make the easement shown on the plat part of the deed. In other words, the plat did not become part of the deed to reflect the easement even when the easement existed within the boundary lines on the plat. *Id.* This is true even though (1) the easement was properly recorded in the public records, (2) ran across the owner’s property, and (3) was depicted on a recorded subdivision plat which was incorporated into the deed’s legal description.<sup>5</sup> *Id.* The supreme court concluded, as follows:

A plat . . . is not an index to encumbrances, and the mere reference in a deed . . . to a plat for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of the clear intention that it so operates.

*Id.* Consequently, a plat that is referenced in a deed for descriptive purposes becomes a part of the deed *only* to provide the boundaries of the property conveyed, and therefore, references to easements on the plat do not become part of the deed, as a matter of law.

When this principle is applied to the present case, it is clear that the reference on the Loflin Plat to the “road” did not convey any rights regarding the “road” to Loflin or to any subsequent purchaser. Like the deed in *Lancaster*, the deed to Loflin (and the deed to Gooldy) incorporates the plat solely for descriptive purposes. Thus, Congaree Associates cannot as a matter of law be deemed to have created a right in a non-existent road because it signed a deed that incorporated a plat that showed a “road” that was not part of the description of the property being conveyed. The

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<sup>5</sup> By contrast, Gooldy’s alleged easement is implied, and therefore, not recorded in the Lexington County records. His alleged easement does not run across or burden his property. Rather, it runs outside of the boundary lines of his property as depicted on the Loflin Plat. Finally, Gooldy’s alleged easement was depicted on an individual lot plat, not a recorded subdivision plat.

incorporation of the Loflin Plat only served to convey the 0.68 acres within the boundary lines on the plat. The Master erred by looking outside of the boundary lines on the Loflin Plat to infer the existence of a road or an easement to use it. Therefore, the 50' road notation did not become part of the deed to Loflin. As a result, no basis exists to conclude that Gooldy received any rights in the alleged 50' road by means of the plat. The Court of Appeals correctly concluded that no presumption of an easement arose in favor of Gooldy.<sup>6</sup>

Gooldy argues that the Court of Appeals' reliance on *Lancaster* and *Bennett* is misplaced. (Pet. for Writ of Cert. 11-12.) However, the comparison of *Lancaster* to the present case as outlined in footnote 6 does not support any supposed distinction, but rather supports the application of this principle to these facts. Similarly, *Bennett* serves to strengthen, not diminish, the conclusion that no implied easement ever existed. Gooldy argues that *Bennett* only concerns the width (not existence) of an easement. But *Bennett* relies on a series of cases that stand for the principle of law that the incorporation of a plat becomes part of the deed to show "the boundaries, metes, courses, and distances of the property conveyed." *Bennett*, 370 S.C. at 594, 635 S.E.2d at 657. It then uses this unequivocal principle to conclude that the parties incorporated the plat to show the boundary lines of the property conveyed, not to warrant the width of the right of way. *Id.* at 594-95, 635 S.E.2d at 657-58. There is nothing in the *Bennett* or *Lancaster* opinions to suggest that this well-established principle may only be applied in cases involving the warranty of an easement's width. The Court of Appeals properly applied *Lancaster* and *Bennett*.

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<sup>6</sup> Even if such a presumption existed, it is rebuttable. *See, e.g., Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965); *Inlet Harbour v. S.C. Dep't of Parks, Recreation, & Tourism*, 377 S.C. 86, 93, 659 S.E.2d 151, 154-55 (2008) (stating "the rule applied in *Blue Ridge* is nothing more than a presumption" that can be overcome by the developer's intent). Any conceivable presumption was rebutted by Congaree Associates' principal's uncontradicted testimony that Congaree Associated did not intend to create or convey any easement rights to Loflin and his successors.

**B. McAllister Is Distinguishable and Inapplicable.**

Gooldy claims that the Court of Appeals' decision is contrary to *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990). Gooldy states the property description in this case and *McAllister* are "identical," and therefore, this Court should find that an implied easement exists in this matter, as it did in *McCallister* when a road abutted the at-issue tract. (Pet. for Writ of Cert. 12-13.) This argument fails for many reasons. First and foremost, no road has ever existed, thwarting the underpinning of Gooldy's "argument." Moreover, *McAllister* is distinguishable because in that case (1) the deed referred to the tract as being bounded by the road in question; (2) the road had width and length dimensions shown on the plat; (3) the plat was prepared for the common grantors; and (4) the plat was of more than one parcel. *McAllister*, 217 S.C. at 10-12, 389 S.E.2d at 858-59. Here, the deed to Loflin does not refer to the "50' road," much less describe the lot as being bounded by the "50' road." The road never existed, and therefore, the road had no width or length dimensions in the Loflin Plat. The Loflin Plat was prepared for Loflin, not Congaree Associates, and the Loflin Plat was only a plat of one parcel. (R. p. 377.) *McAllister* does not support Gooldy's argument, and *Lancaster* and *Bennett* remain the controlling authorities.

**II. The Court of Appeals Correctly Concluded The Record Is Devoid of Any Evidence to Support a Conclusion that the Parties Intended to Create an Implied Easement.**

The creation of an easement is a question of intent. Easements by implication "must be determined as of the time of the severance of the ownerships of the tracts involved." *Boyd v. BellSouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006). Courts examine the intentions of the parties to the conveyance to determine whether an implied easement exists. *See Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 235, 662 S.E.2d 452, 456-57 (Ct. App. 2008) (holding "the intentions of the parties to the transaction are the overriding focus when examining implied

easements.”). Implied easements are not favored and must be strictly construed “because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself.” *Inlet Harbour v. S.C. Dep’t of Parks, Recreation, & Tourism*, 377 S.C. 86, 91-92, 659 S.E.2d 151, 154 (2008).

When analyzing whether a grantor intended to create an easement, courts may look to the deed as well as other evidence of intent. *Inlet Harbor*, 377 S.C. at 91-92, 659 S.E.2d at 154. (rejecting argument that court should only look to plat reference in deed to determine whether parties intended to create an implied easement). When examining a deed, the court must focus on the intention of the parties. *See Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391 (1987). “One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened.” *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 570, 635 S.E.2d 660, 665 (Ct. App. 2006) (internal quotation marks omitted). Consequently, courts must construe the deed “as a whole, and effect given to every part thereof, if such can be done consistently with the law.” *Id.* at 571, 635 S.E.2d at 665.

“The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.” *Id.* at 574, 635 S.E.2d at 667 (quoting *Lancaster*, 246 S.C at 468, 144 S.E.2d at 211 (emphasis added)). Therefore, a court is not limited to the deed to determine intent. It can look to “the circumstances surrounding its execution.” Additionally, it can look to evidence after the execution of the deed because the subsequent evidence may show that prior intent to create an easement never existed.

Here, the Court of Appeals correctly found that there is no evidence in the record that reasonably supports a finding that the common grantor intended to create an easement. To the

contrary, the uncontroverted evidence establishes that there was never any such intent. First, the incorporation of the Loflin Plat into the deed does is not evidence any intent as a matter of law. Second, the principal of the common grantor testified that there was no intent to create an easement at the time of severance. This testimony is consistent with and supported by the fact that no road was ever built, as reflected in plats drafted by the same surveyor who drafted the Loflin Plat. The record contains no evidence that there was any intent to create an easement.

**A. The Deed Does Not Express Intent to Convey an Easement.**

As previously discussed, the *Lancaster* rule provides, as a matter of law, that easements on a plat do not become part of the deed when the plat is incorporated for descriptive purposes. *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211. The reference to the Loflin Plat in the deed to Loflin is therefore not evidence of intent to create an easement.

**B. The Uncontroverted Testimony of the Common Grantor Establishes the Lack of Intent to Create an Easement.**

Carroll McGee, the principal of Congaree Associates, unequivocally testified that there was never any intent to establish any easement rights when Congaree Associates conveyed the Gooldy Parcel to Loflin.<sup>7</sup> It did not intend to create or convey any rights in a non-existent 50' road to Loflin. (App. pp. 228:13 – 229:6.) By referencing the Loflin Plat, Congaree Associates only

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<sup>7</sup> The Court of Appeals properly considered the testimony of Carroll McGee with respect to the intent surrounding the alleged easement. As discussed above, because (1) an implied easement “goes against the general rule that a written instrument speaks for itself [.]” *Inlet Harbour*, 377 S.C. at 91-92, 659 S.E.2d at 154, and (2) the intention of the parties referencing a plat in a deed must be “determined from the whole instrument and the circumstances surrounding its execution[.]” *Bennett*, 370 S.C. at 574, 635 S.E.2d at 667, a court cannot limit itself to the deed to determine the parties’ intent. *See also Inlet Harbor*, 377 S.C. at 93, 659 S.E.2d at 155 (“Thus, to the extent the [claimant of the easement] urges this Court to ignore everything except the deed’s reference to a residential subdivision plat, this argument fails to remain true to the principles underlying implied easements.”).

intended to convey the property within the boundary lines, *i.e.* the Gooldy Parcel. (App. pp. 228:8 – 229:12.) By allowing the deed that referenced the Loflin Plat to be recorded, Congaree Associates did not intend to create an easement. (App. pp. 228:13 – 229:13.) There is no evidence to the contrary. Therefore, no easement existed at the time Congaree Associates severed its parcel and sold the Gooldy Parcel to Loflin, and therefore, no easement exists today.

**C. No Road Has Ever Existed.**

The absence of intent to grant an easement over a road is most plainly evidenced by the fact that no road was ever constructed. Neither Congaree Associates nor any of its predecessors or successors in title ever caused a road to be built. (App. pp. 208:25-209:3; App. p. 209:20-25; App. p. 232:17-19; *see also* App. p. 404.) No road existed at the time Gooldy purchased his parcel. (App. pp. 160:14-161:2.) None of the recorded plats shows a survey of a road. (App. pp. 396 - 401.) The Lexington County's TMS map shows no road. (App. p. 403.) The most recent surveyor of the subject property testified that no road existed (App. p. 249:10-22.), as did The Storage Center's expert (App. p. 301:7-13; App. p. 312:12-15).

**D. Subsequent Plats Show No Road.**

Because no road has ever existed, it is not surprising that plats drawn after the Loflin Plat do not show any road or easement. Given that these plats were prepared for the owner of the property that supposedly contained the "road," they are strong evidence that Congaree Associates never intended to create any such road. Robert Collingwood, the surveyor who drew the Loflin Plat, subsequently drew two other plats of the subject parcels in 1998 and 2002 that did not contain any references to the alleged 50' road or any associated easements. (App. pp. 400-401 and App. p. 403.) In fact, the 2002 plat, which was prepared *after* Gooldy purchased his parcel in January of 2002, was revised in 2003 specifically "to show easements," yet the revised plat shows no

reference to the alleged 50' road or any associated easement. (App. p. 403.) Additionally, the Strasburger Plat prepared by Charles Meeler in 2006 did not include any references to the alleged 50' road or any associated easement. (App. pp. 396-398.) Finally, Lexington County's TMS map, which was created in the 2000s, shows no road abutting the southern side of the Gooldy Parcel. (App. p. 402.) In sum, the deed itself and subsequent actions of the grantor support McGee's clear testimony that Congaree Associates never intended to create or convey in easements in favor of Loflin and his successors.

**E. Gooldy's Reliance on an Unrecorded Plat That Shows a Road is Misguided.**

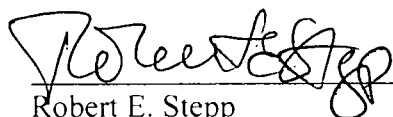
Gooldy tries to avoid the evidence discussed above by relying on an unrecorded proposed plat (App. p. 405) that shows a road to support his conclusion that Congaree Associates intended to create an easement. (App. pp. 6-7, 15-16; R. pp. 24-28.) However, this proposed plat (a) never received final approval from Lexington County, (b) was never recorded, and (c) reflects a project that Congaree Associates elected not to pursue. Congaree Associates never subdivided its land or sold lots referencing a recorded subdivision plat that contained any reference to a 50' road. (App. p. 206:16-21; App. p. 214:24-25.) The inclusion of a road on a *proposed plat* does not necessarily reflect any intent to create a road. Rather, it shows to the contrary because it demonstrates that while Congaree Associates considered creating a road, it elected not to do so. The absence of action by Congaree Associates to record the plat or to build the road should be conclusive as to its intent. Thinking about building a road and intending to build a road are two very different concepts. Actually building a road is yet again different. The direct testimony of Carroll McGee is that Congaree Associates never built a road (App. pp. 208:25-209:3; App. p. 209:20-25; App. p. 232:17-19), and it never intended to convey any easement rights to Loflin (App. p. 224:16-20).

Any inference of an intent to the contrary based on the proposed plat is wholly rebutted by the testimony of McGee.

**CONCLUSION**

The Court of Appeals decided this case on well-established principles of South Carolina law. No novel questions of law, federal questions, or constitutional issues are involved, and there is no decision of the Court of Appeals in conflict with a prior decision of this Court. For these reasons and the reasons set forth above, Respondent respectfully request this Court deny Gooldy's Petition for Writ of Certiorari.

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April 20, 2016

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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David R. Gooldy,

Petitioner,

vs.

The Storage Center – Platt Springs, LLC,

Respondent.

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**PROOF OF SERVICE**

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I certify that I have caused the service of the Return to Petition for Writ of Certiorari on Petitioner David R. Gooldy by hand delivery on April 20, 2016, to his attorney of record, James Randall Davis, Esquire, Nicholson, Davis, Frawley, Anderson and Ayer, LLC, 140 East Main Street, Lexington, South Carolina 29701.



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