IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.

REPLY BRIEF OF THE APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err 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?

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?

III. Did the trial court err 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?

IV. Did the trial court err in determining that Appellant's claim was barred by the doctrine of *res judicata* since the 2006 case was a declaratory judgment action?

ARGUMENT IN REPLY

Without restating the issues or making redundant arguments which have been thoroughly set forth in her initial brief, the Appellant offers the following points of clarification and rebuttal to the arguments raised by Respondents.

I. 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.

Appellant objects to Respondents assertion that the legal basis for the Trial Court's decision are based on case law not cited in the Final Orders nor brought up in trial. Respondents rely heavily on a comparison between this case and *Crosland v. Rogers*, however neither the Final Order nor the Order Denying Motion reference *Crosland v. Rogers*. Furthermore, if the Court is to compare the facts of this case to the facts presented in *Crosland v. Rogers* there is no reasonable comparison. The Rogers case is dealing with the strict necessity of a ditch for drainage and this case is dealing with the strict necessity for access to Appellant's land. *Crosland v. Rogers* 32 S.C. 130, 10 S.E. 874, (1890). A property owner's necessity to drain water versus a property owner's necessity to access their land is vastly different.

Contrary to Respondents arguments that additional evidence regarding the 1935 conveyance is required to show the degree of necessity, it is undisputed that the 1935 conveyance (as adjudicated in the 2008 court order) rendered the remaining lands of Thomas Jackson completely landlocked and without any other access for ingress and egress. Second, there is in fact, testimony from both the Appellant and the Respondent, Henry Russell Jackson that access to the property was actually never an issue until the death of the Respondents' father, Ruben Jackson, in 1985. (*See*, e.g., Trial Transcript, p.

155, lines 7-10, p. 157, lines 4-8, p. 160, lines 22-25, p. 161, lines 1-12, p. 160, lines 3-12, p. 92, lines 9-25, p. 93, lines 1-25, p. 94, line 1, which is quoted in full under Argument II of Appellant's brief). Therefore, as a practical matter, the present case turns solely on the meaning of "strict necessity."

Finally, Respondents argue that Appellant showed no evidence of her attempt to purchase an easement across strangers' land. However it is undisputed that the properties to the east and south and were never part of the same parcel and the property to the west was the first severance and therefore Appellant has no claim for an easement across that property. There is no way that the Appellant (or for that matter, even the courts) could ever require a stranger to grant an easement over their property for the Appellant's use. See, e.g., South Carolina Constitution, Article I, Section 13. Furthermore, if you really think this proposition through, *every property* is abutted by *some other property*, so for the trial court to suggest that "strict necessity" requires some manner of physical impediment on all other boundaries is misguided and completely misses the point of an easement by necessity.

II. THE TRIAL COURT ERRED IN DETERMINING THAT APPELLANT'S CLAIM WAS BARRED BY SC CODE SECTIONS 15-3-380 AND/OR 15-3-340 BECAUSE THESE CODE SECTIONS ARE INAPPLICABLE TO AN EASEMENT BY NECESSITY.

Appellant objects to Respondents claim that Ruben Jackson and his family have possessed without disturbance the property conveyed to him in 1935 and that Thomas and Ruben Jackson presented no evidence before their deaths about the circumstances surrounding the conveyance of land. Clearly, it was undisputed that the Appellant and her father before her had been accessing and using their lands through the Respondents' property. The testimony of Appellant and Respondents regarding their fathers' use of the

land is clearly evidence regarding the circumstances surrounding the conveyance of the land.

The Final Orders only cite SC Code §15-3-380 and §15-3-340 therefore Appellant objects to Respondents assertion that SC Code §15-3-600 applies.

III. 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.

Appellant objects to Respondents' assertion that Appellant had a clue that her property was landlocked in 1974 and 1982. Again, even if the true point of severance was the 1935 deed to Ruben Jackson, at the very least, the vague and inconsistent language used to describe the property conveyed in the 1935 deed, coupled with the fact that the Appellant believed the property in question was part of her lands *because she regularly used the property to access her lands*, demonstrates that title to the Respondents' property was questionable and disputed, at best, until the 2008 order, and that the Appellant's actions have been reasonable, under the circumstances.

IV. 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 JUDGEMENT ACTION.

Appellant objects to Respondents' assertion that Appellant knew access was an issue in 2008. Respondents state in their brief and agree with Appellant that the 2008 case was a judicial determination. Requiring Appellant to know what a judge would or wouldn't do before the case is absurd. This is significant because "[a] declaratory judgment in not *res judicata* as to matters not at issue and not passed upon. 22A Am.Jur.2d Declaratory Judgments § 239 (1988). The doctrine "is only a bar to matters which were actually litigated, not those that might have been litigated." Id. § 240. The

issue of whether or not Appellant was entitled to an easement would not have been ripe until the judicial determination.

CONCLUSION

As this Court stated in Morrow v. Dyches, "the whole point of the easement by necessity doctrine is to ensure that landlocked parcels have access to a public road...which is one of the rights essential to the enjoyment of land." *Morrow v. Dyches* 328 S.C. 522, 529, 492 S.E.2d 420, 424 (S.C. App. 1997). Without access, the Appellant's property is completely useless to her. For the reasons set forth herein, the Appellant respectfully submits that the Court of Appeals should reverse the trial court's Final Order and Order Denying Motion in this case, order that the Appellant is entitled to an easement by way of necessity across the lands of the Respondents in order to establish access for ingress and egress to the public road, and remand for a determination of the precise location of the easement.

Respectfully Submitted,

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May 2, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master in Equity

Civil Action No. 2012-CP-08-3013
Appellate Case No. 2015-002175

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Cynthia Jacqueline Jackson Mills, Appellant,

v.

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

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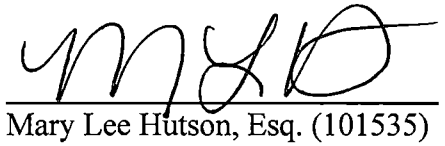
PROOF OF SERVICE

I certify that I have served Appellant's Reply Brief on Janet Lynne Hudson, Henry Russell Jackson, and Mildred Jackson Hudson by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2016, addressed to their attorney of record, Patrick R. Watts, Esq., Post Office Box 2046, Summerville, South Carolina 29484.

Respectfully submitted,



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May 2, 2016

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VIA U.S. MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Cynthia Jacqueline Jackson Mills vs. Janet Lynne Hudson, Henry Russell Jackson And Mildred Jackson Hudson*
Case No.: 2012-CP-08-3013
Appellate Case No.: 2015-002175

Dear Ms. Kitchings:

Enclosed for filing is one (1) original and one (1) copy of Appellant's Reply Brief in the above-referenced case. Also enclosed is the following:

(1) Proof of Service of Appellant's Reply on the Respondents.

Please return one, file stamped copy to our office. I have enclosed a stamped, self-addressed envelope for your convenience. Thank you for your assistance. Please do not hesitate to contact our office should you have any questions or concerns.

Sincerely,

Mary Lee Hutson, Esq.

Enclosures
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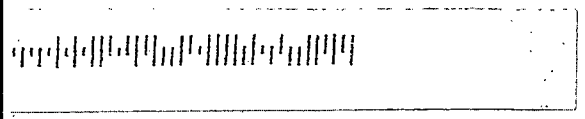

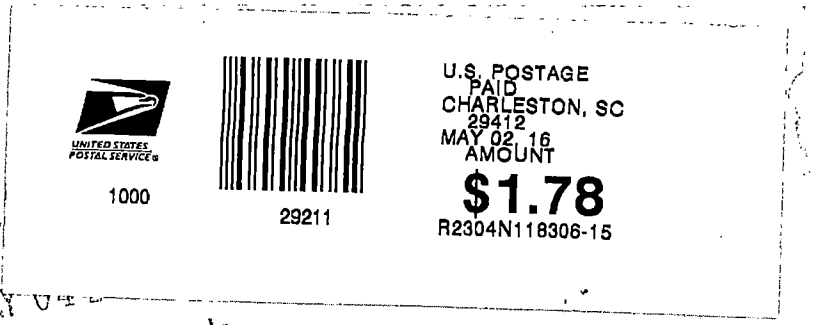

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