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SC Court of Appeals

**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.

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Appellant,

v.

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and Mildred Jackson Hudson,

Respondents.

Reply Brief of Respondents

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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?

Respondents' Argument in Reply

Respondents offer the following points of clarification and rebuttal to the arguments in reply raised by Appellant.

- 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.**

In her Reply Brief Appellant objects to Respondents' citing case law that is not cited in the Final Orders nor brought up in trial, particularly *Crosland v. Rogers*, 32 S.C. 130, 10 S.E. 874, 875 (1890).

The trial court's Order Denying Motion references *Crosland v. Rogers* within the long quote at the bottom of page 5. (Order Denying Motion, pg. 5) That long quote is from *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375, 383 (1927). It paraphrases a passage from *Crosland*.

Appellant's own Initial Brief references *Crosland v. Rogers* in the long quote from *Brasington v. Williams* on page 8. (Initial Brief of Appellant, pg. 8) That happens to be the same long quote from the trial court's Order Denying Motion.

Appellant seeks to distinguish the facts in the *Crosland* case from her facts. Within the *Brasington* Court's extensive explication of the principals of law on easements by necessity, it relies favorably upon the principals the *Crosland* Court expressed. The *Brasington* Court makes no distinction whatsoever between the facts of *Crosland* (a water way) and its own facts (a road way). It does not even mention the fact that *Crosland* involves a water ditch. When one reads *Brasington's* discussion about access easements by necessity, with all its references to different case law, and then reads

Crosland, one is surprised to learn that *Crosland* is about a water ditch and not a road. Since *Brasington*, a road way case, favorably acknowledges *Crosland*, a water way case, without noting that factual distinction, then that factual distinction appears to have no relevance, either then or now.

The remainder of Argument I in Appellant's Reply Brief repeats verbatim passages from her Initial Brief. Respondents have already addressed those matters in their own Initial Brief.

II. 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.

Appellant objects to Respondents' assertion that SC Code § 15-3-600 applies, when the trial court's orders cite only SC Code §§ 15-3-340 and 15-3-380. "Simply because a party does not expressly articulate the relevance of a particular case does not excuse the court of appeals from failing to apply controlling precedent." *State v. Phillips*, Op. No. 27607 (S.C. Sup. Ct. filed Apr. 20, 2016).

Respondents also note that the Appellant cited the cases listed below in her Initial Brief but did not cite them in her Motion for Summary Judgment, her Pre Trial Brief or her Motion for Reconsideration.

1. *Eldridge v. City of Greenwood*, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998).
2. *Grosshuesch v. Cramer*, 367 S.C. 1, 623 S.E.2d 833 (2005).
3. *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006).
4. *Hayes v. Tompkins*, 287 S.C. 289, 337 S.E.2d 888 (Ct. App. 1985).
5. *Jowers v. Hornsby*, 292 S.C. 549, 357 S.E.2d 710 (1987).
6. *Lyerly v. Yeadon*, 199 S.C. 363, 19 S.E.2d 648 (1942).

7. *Morrow v. Dyches*, 328 S.C. 522, 492 S.E.2d 420 (Ct. App. 1997).
8. *Paine Gayle Properties, LLC v. CSX Transportation, Inc.*, 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012).
9. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999).
10. *Robinson v. Asbill*, 328 S.C. 450, 492 S.E.2d 400 (Ct. App. 1997).

The remainder of Argument II in Appellant's Reply Brief repeats verbatim passages from her Initial Brief. Respondents have already addressed those matters in their own Initial Brief.

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.

All of Argument III of Appellant's Reply Brief repeats verbatim passages from her Initial Brief. Respondents have already addressed those matters in their own Initial Brief.

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 judgment action.

All of Argument IV of Appellant's Reply Brief repeats verbatim passages from her Initial Brief. Respondents have already addressed those matters in their own Initial Brief.

Conclusion

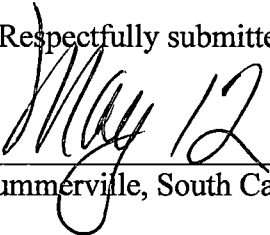
South Carolina holds a general warranty in a deed in very high regard. If a grantor of property later commences an action against her grantee to claim an easement by necessity over her grantee's property, then, in order to overcome that absolute grant, South Carolina requires evidence of a degree of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

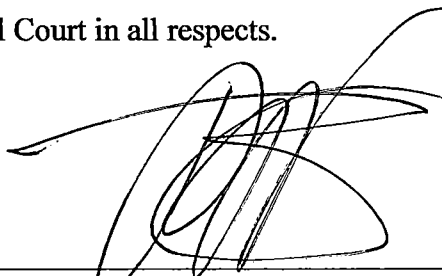
Appellant failed to present any evidence demonstrating that extra degree of necessity. Appellant could not have produced any evidence about the circumstances surrounding the severance creating this situation that would have enlightened us about the intent of the parties to that transaction. All the witnesses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


May 12, 2016
Summerville, South Carolina



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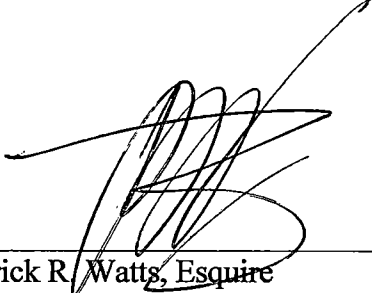
Janet Lynne Hudson, Henry Russell Jackson
and Mildred Jackson Hudson,

Respondents.

PROOF OF SERVICE

I certify that I have served Respondents' Reply Brief on Cynthia Jacqueline Jackson Mills by depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2016, addressed to her attorney of record, Mary Lee Hutson, Esq., Inglese & Associates, LLC, 105 Wappoo Creek Drive, Suite 1A Charleston, South Carolina 29412.

May 12, 2016
Summerville, South Carolina


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May 12, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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SC Court of Appeals

Re: Cynthia Jacqueline Jackson Mills, Appellant vs. Janet Lynne Hudson, Henry Russell Jackson, and Mildred Jackson Hudson, Respondents
Civil Action No.: 2012-CP-08-3013
Appellate Case No.: 2015-002175

Dear Ms. Kitchings:

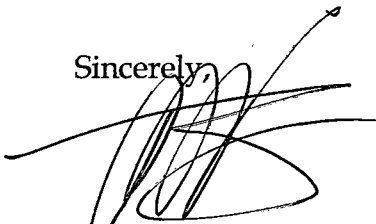
Please accept for filing with the record of the referenced case the following items.

- o Reply Brief of Respondents, Janet Lynne Hudson, Henry Russell Jackson, and Mildred Jackson Hudson.
- o Proof of Service

Naturally, contact me if you see anything amiss.

Thank you.

Sincerely,



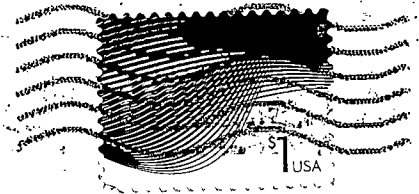
Patrick R. Watts

cc: M.L. Hutson, Esq.
PRW/sfd

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