

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 26, 2012

Thomas E. Player, Jr, Esquire
Player & McMillan, LLC
P.O. Drawer 3690
Sumter, SC 29151

Elizabeth Warner, Esquire
Ben Sadler, Esquire
South Carolina Public Service Authority
1 Riverwood Drive
Moncks Corner, SC 29461

Re: Darby, Daniel v. SC Public Service Auth

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant	10 minutes
Respondent	10 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Thursday, April 5, 2012 at 9:30 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins
Administrative Assistant

DES/dmh



Elizabeth Henry Warner
Associate General Counsel -
Litigation and Environmental Affairs

One Riverwood Drive
Post Office Box 2946101
Moncks Corner, SC 29461-6101
(843) 761-7044
FAX: (843) 761-4149

February 22, 2012

Honorable Daniel E. Shearhouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Darby, Appellant v. South Carolina Public Service Authority, Respondent
Case Number 2008-CP-14-00354

Dear Mr. Shearhouse:

I am in receipt of your letter notifying the parties that the above appeal has been placed on the April Preliminary list for hearings. I will be arguing the appeal and I have no conflicts for the referenced dates.

Thank you for your assistance,

A handwritten signature in black ink, appearing to be 'E. Warner', with a long horizontal flourish extending to the right.

Elizabeth Henry Warner

cc: Thomas E. Player, Jr., Esq.

RECEIVED

FEB 23 2012

S.C. SUPREME COURT

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

February 20, 2012

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: *Darby, Daniel Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2008-CP-14-354
P&M File No.: 2837

Dear Mr. Shearouse:

I received notice that the above case had been placed on the April Preliminary list for hearings. I am unaware of any conflicts with any date the hearing might be scheduled. To my knowledge, there have been no changes or additions of counsel.

Best regards,

Yours truly,


Thomas E. Player, Jr.

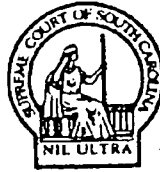
RECEIVED

FEB 22 2012

TEP, Jr./jv

cc: Ms. Elizabeth H. Warner
Mr. Benjamin L. Sadler

S.C. SUPREME COURT



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Elizabeth Warner, Esquire
Ben Sadler, Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17 and 18. Please notify this office in writing prior to February 24, 2012 as to any scheduling conflicts for the April term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Darby, Daniel v. SC Public Service Auth



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Thomas E. Player, Jr, Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17 and 18. Please notify this office in writing prior to February 24, 2012 as to any scheduling conflicts for the April term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Darby, Daniel v. SC Public Service Auth

The Supreme Court of South Carolina

Daniel Darby,

Appellant,

v.

South Carolina Public Service
Authority,

Respondent.

The Honorable Thomas W. Cooper, Jr.
Clarendon County
Trial Court Case No. 2008-CP-14-00354

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

February 16, 2012

cc: Thomas E. Player, Jr, Esquire
Elizabeth Warner, Esquire
Ben Sadler, Esquire
The Honorable Tanya Gee

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

October 20, 2011

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

The Honorable V. Claire Allen
Deputy Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

OCT 21 2011

SC Court of Appeals

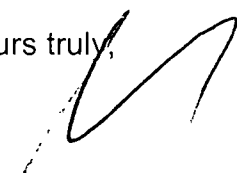
RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2008-CP-14-354
P&M File No.: 2837

Dear Ms. Allen:

We are in receipt of your letter dated October 19, 2011 regarding originals of the Certificate of Counsel for the record on Appeal, the Final Brief and Final Reply Brief and original Proof of Service for the Final Brief and Final Brief Reply, each of which is enclosed.

Best regards,

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosures

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

CASE NO.: 2008-CP-14-354

Daniel Darby, ...Appellant,

vs.

South Carolina Public Service Authority, ...Respondent.

PROOF OF MAILING

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 12th day of September, 2011, served the **Record on Appeal** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

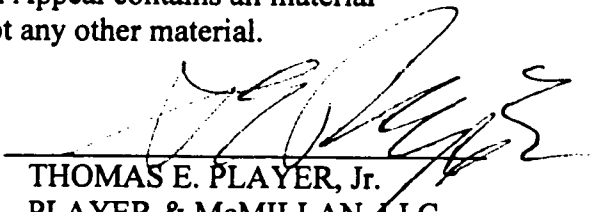
Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Sumter, South Carolina

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



THOMAS E. PLAYER, Jr.
PLAYER & McMILLAN, LLC
305 North Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-
3690
(803) 775-2306
Attorney for the Appellant

Sumter, South Carolina
September 10, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

CASE NO.: 2008-CP-14-354

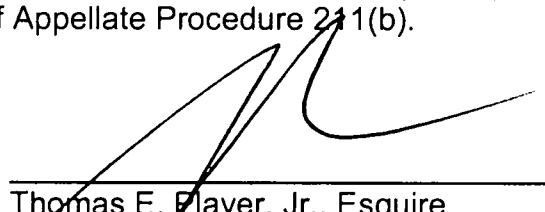
Daniel Darby, ...Appellant,

vs.

South Carolina Public Service Authority, ...Respondent.

**CERTIFICATE THAT APPELLANT DANIEL DARBY'S FINAL REPLY BRIEF
COMPLIES WITH RULE 211 (b)**

I certify that the Final Reply Brief of Appellant Daniel Darby complies with the requirements of South Carolina Rules of Appellate Procedure 211(b).



Thomas E. Player, Jr., Esquire
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306
ATTORNEY FOR THE APPELLANT

September 29, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

CASE NO.: 2008-CP-14-354

Daniel Darby, ...Appellant,

vs.

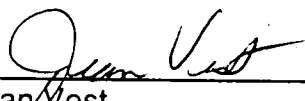
South Carolina Public Service Authority, ...Respondent.

PROOF OF MAILING

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 29th day of September, 2011, served the **FINAL REPLY BRIEF OF APPELLANT** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent

Sumter, South Carolina

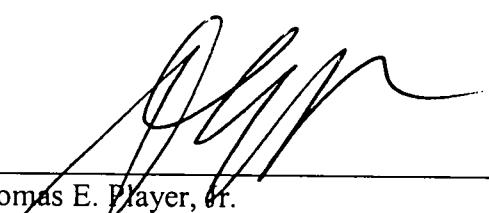


Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

CONCLUSION

For the foregoing reasons Darby requests that this court reverse the trial order and direct the entry of judgment declaring the boundary line to be located with reference to the 76.8 foot contour line reflected on the C map and confirmed by the Elliott and McLeod plats.

Sept 29, 2011



Thomas E. Player, Jr.
PLAYER & MCMILLAN, LLC
305 North Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

ATTORNEY FOR THE APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

CASE NO.: 2008-CP-14-354

Daniel Darby, ...Appellant,

vs.

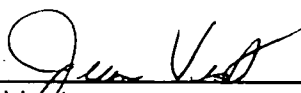
South Carolina Public Service Authority, ...Respondent.

PROOF OF MAILING

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 29th day of September, 2011, served the **FINAL BRIEF OF APPELLANT** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent

Sumter, South Carolina



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

CASE NO.: 2008-CP-14-354

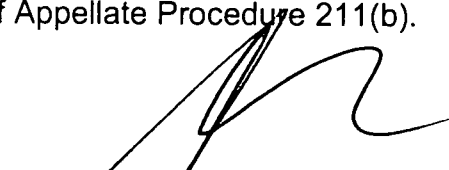
Daniel Darby, ...Appellant,

vs.

South Carolina Public Service Authority, ...Respondent.

**CERTIFICATE THAT APPELLANT DANIEL DARBY'S FINAL BRIEF COMPLIES
WITH RULE 211 (b)**

I certify that the Final Brief of Appellant Daniel Darby complies with the requirements of South Carolina Rules of Appellate Procedure 211(b).



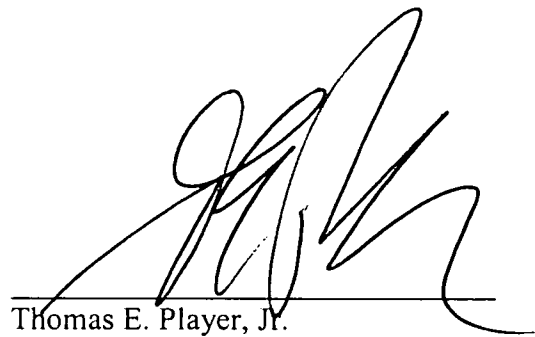
Thomas E. Player, Jr., Esquire
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306
ATTORNEY FOR THE APPELLANT

September 29, 2011

CONCLUSION

For the foregoing reasons Darby requests that this court reverse the trial order and direct the entry of judgment declaring the boundary line to be located with reference to the 76.8 foot contour line reflected on the C map and confirmed by the Elliott and McLeod plats.

September 29, 2011

A handwritten signature in black ink, appearing to read 'T. Player, Jr.', is written over a horizontal line.

Thomas E. Player, Jr.
PLAYER & MCMILLAN, LLC
305 North Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

ATTORNEY FOR THE APPELLANT



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 19, 2011

Thomas E. Player, Jr., Esquire
Player & McMillan, LLC
P.O. Drawer 3690
Sumter, SC 29151

Re: Darby, Daniel v. SC Public Service Auth
2011184586

Dear Mr. Player:

We have received the Record on Appeal, Final Brief of Appellant and the Final Reply Brief of Appellant in the above case.

Upon review, it appears the Certificate of Counsel for the record and briefs are copies and the Proof of Service for the briefs appear to be copies. Within ten days of the date of this letter, please provide the original Certificate of Counsel for the Record on Appeal, the Final Brief, and Final Reply Brief and the original Proof of Service for the Final Brief and Final Reply Brief.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Elizabeth Warner, Esquire
Ben Sadler, Esquire

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

September 30, 2011

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

SEP 30 2011

SC Court of Appeals

RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2008-CP-14-354
P&M File No.: 2837

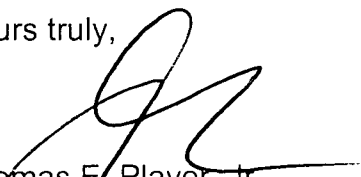
Dear Ms. Gee:

This letter accompanies the hand-delivery of the following regarding the above:

1. Fifteen (15) copies of the Record on Appeal (1 copy unbound);
2. Fifteen (15) copies of the Appellants Brief (1 copy unbound);
3. Fifteen (15) copies of the Appellants Reply Brief (1 copy unbound);
4. Record on Appeal Separately Filed Exhibits Numbered 1, 2, 3 & 4;
5. Copy of Certificate of Mailing Proof of Service in the way of Certificate of Mailing, of Appellants Final Brief and Reply Brief upon the Respondent;
6. Letter dated September 2, 2011, Original signatures of Appellant and Respondent's counsel agreeing to include Plaintiff's Exhibit Number 11 in the record on Appeal.

Best regards,

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosures

1

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

September 2, 2011

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

Ms. Elizabeth H. Warner
Santee Cooper, Associate General Counsel
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101

RECEIVED

SEP 3 0 2011

SC Court of Appeals

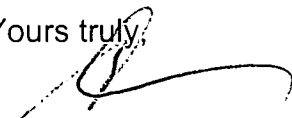
RE: Daniel Darby vs. South Carolina Public Service Authority
Civil Action No.: 2008-CP-14-354

Dear Babs:

I discussed with Ben the fact that we inadvertently failed to include in the Designation of Matters to be Included on the Record of Appeal Plaintiff's Exhibit number 11, which is the photograph of the US Fish and Wildlife sign. Thank you for agreeing to allow the Amendment of the Record to include this exhibit. Please acknowledge your consent by signing this letter and returning it to me in the envelope included.

Best regards.

Yours truly,



Thomas E. Player, Jr.

I consent.



Elizabeth H. Warner

TEP,Jr./jv

RECEIVED
SEP 03 2011
BY: 2837

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

CASE NO.: 2008-CP-14-354

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SEP 30 2011

Daniel Darby, ... SC Court of Appeals

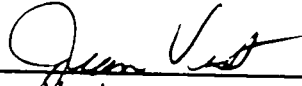
vs.

South Carolina Public Service Authority, ... Respondent.

PROOF OF MAILING

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 29th day of September, 2011, served the **FINAL REPLY BRIEF OF APPELLANT** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Sumter, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

CASE NO.: 2008-CP-14-354

RECEIVED

SEP 30 2011
SC Court of Appeals

Daniel Darby, ...Appellant,

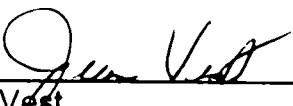
vs.

South Carolina Public Service Authority, ...Respondent.

PROOF OF MAILING

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 29th day of September, 2011, served the **FINAL BRIEF OF APPELLANT** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Sumter, South Carolina



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

October 4, 2011

Elizabeth Warner, Esquire
Ben Sadler, Esquire
South Carolina Public Service Authority
1 Riverwood Drive
Moncks Corner, SC 29461

Re: Darby, Daniel v. SC Public Service Auth
2011184586

Dear Counsel:

We have received the Respondent's Final Brief in the above case. However, you were reminded in our letter dated July 25, 2011 that the caption should read as follows:

Daniel Darby,

Appellant,

v.

South Carolina Public Service Authority,

Respondent.

Please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A. Brown Building, 1205 Pendleton Street, Columbia, SC 29201 to place the appropriate labels on the cover of the original and all copies of the brief. **We request that you have all corrections completed within ten (10) days of the date of this letter and that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Thomas E. Player, Jr, Esquire

Benjamin Sadler

Attorney II

Office of General Counsel

(843) 761-7075

fax: (843) 761-4010

September 29, 2011

Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29201

RECEIVED

OCT 03 2011

SC Court of Appeals

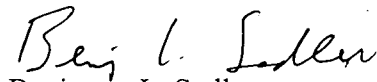
Re: Darby v. South Carolina Public Service Authority
2008-CP-14-00354

Dear Ms. Gee:

Enclosed herein please find an original unbound Final Brief of Respondent and fifteen (15) bound copies. We have also included an original and copy of the Certificate of Counsel and Proof of Service.

We respectfully request that you return a clocked copy of the Final Brief, Certificate of Counsel, and Proof of Service in the self-addressed, stamped envelope provided.

Respectfully,



Benjamin L. Sadler

BLS/pc
ENCS

cc: Thomas Player, Esq.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

CASE NO.: 2008-CP-14-354

Daniel Darby, ...Appellant,

vs.

South Carolina Public Service Authority, ...Respondent.

RECORD ON APPEAL

RECEIVED

SEP 16 2011

SC Court of Appeals

Thomas E. Player, Jr.
PLAYER & MCMILLAN, LLC
305 North Main Street
Post Office Box 3690
Sumter, South Carolina 29151-3690
Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email address: tomplayer@sc.rr.com
ATTORNEY FOR THE APPELLANT

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101
Telephone: (843) 761-7044
Facsimile: (843) 761-4149
ATTORNEYS FOR RESPONDENT

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

September 15, 2011

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2008-CP-14-354
P&M File No.: 2837

Dear Ms. Gee:

Enclosed please find our corrected Certificate of Mailing of the Record on Appeal.

Best regards,

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosure

RECEIVED
SEP 16 2011
SC Court of Appeals



The South Carolina Court of Appeals

ANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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September 14, 2011

Thomas E. Player, Jr., Esquire
Player & McMillan, LLC
P.O. Drawer 3690
Sumter, SC 29151

Re: Darby, Daniel v. SC Public Service Auth
2011184586

Dear Mr. Player:

We have received the Proof of Service for the Record on Appeal in the above case. However, the proof of service appears to be a copy. Additionally, you should show the lower court case number. The tracking number is used for internal purposes only.

Within ten days of the date of this letter, please provide an original Proof of Service of the record showing the correct lower court case number.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Elizabeth Warner, Esquire
Ben Sadler, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit C

Case No. 2011184586

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SEP 13 2011
SC Court of Appeals

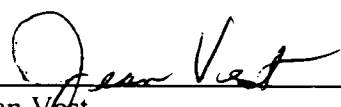
←
Appears to be copy of nt,

Daniel Darby, ...
v.
South Carolina Public Service Authority, ...Respondent.

PROOF OF MAILING

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 12th day of September, 2011, served the **Record on Appeal** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
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Post Office Drawer 3690
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(803) 775-2306

Sumter, South Carolina

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chipmcmillan@sc.rr.com

September 12, 2011

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2011184586
P&M File No.: 2837

Dear Ms. Gee:

Enclosed please find our Certificate of Mailing of the Record on Appeal.

Best regards,

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosure

RECEIVED
SEP 13 2011
SC Court of Appeals

The South Carolina Court of Appeals

Daniel Darby,

Appellant,

v.

South Carolina Public Service
Authority,

Respondent.

The Honorable Thomas W. Cooper, Jr.
Clarendon County
Trial Court Case No. 2008-CP-14-00354

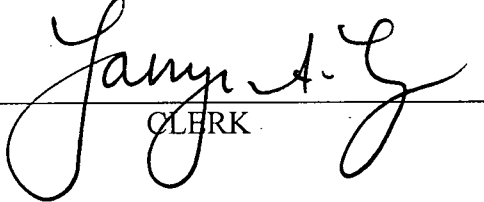
ORDER

For good cause having been shown, the time for the Record on Appeal to be served in the above entitled matter is hereby extended until September 13, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court.

BY


CLERK

Columbia, South Carolina

cc: Thomas E. Player, Jr, Esquire
Elizabeth Warner, Esquire
Ben Sadler, Esquire

FILED

8/22/11

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2011-18-4586

Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

MOTION FOR EXTENSION OF TIME

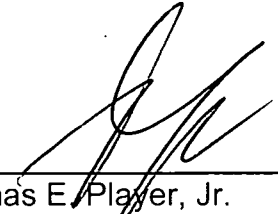
YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 210 and 240 of the South Carolina Appellate Court Rules, Appellant hereby moves for a twenty-five (25) day extension to serve the Record on Appeal, service of which is currently due on August 22, 2011.

Counsel for Appellant has conferred with the Counsel for Respondent as indicated by the email correspondence attached hereto and Respondent has no objection to the Request. This is Appellant's first request for an extension of time to serve the Record on Appeal.

August 17, 2011

Other Counsel of Record:

Ms. Elizabeth H. Warner, Esquire
Mr. Benjamin L. Sadler, III, Esquire
Santee Cooper
One Riverwood Drive
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Facsimile: (843) 761-4010
Attorneys for Respondent


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Facsimile: (803) 436-5960
email address: tomplayer@sc.rr.com
Attorney for Appellant

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AUG 19 2011

SC Court of Appeals

8/19/11

9/13/11

1st

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2008-CP-14-0354

Daniel Darby.....Appellant,
vs.
South Carolina Public Service Authority,.....Respondent.

PROOF OF SERVICE

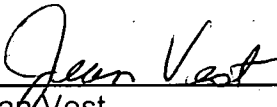
I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 17th day of August, 2011, served the **Motion for Extension of Time** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to it's attorneys of record, Ms. Elizabeth H. Warner and Mr. Benjamin L. Sadler, III, Santee Cooper, One Riverwood Drive, Moncks Corner, South Carolina 29461.

RECEIVED

AUG 19 2011

SC Court of Appeals

Sumter, South Carolina



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Tommy Player

From: Warner, Elizabeth [elizabeth.warner@santeecooper.com]

Sent: Wednesday, August 17, 2011 2:27 PM

To: tomplayer@sc.rr.com; Sadler, Benjamin

Subject: Re:

No problem Tommy.

From: Tommy Player [mailto:tomplayer@sc.rr.com]

Sent: Wednesday, August 17, 2011 06:25 PM

To: Sadler, Benjamin; Warner, Elizabeth

Subject:

Service of the record on appeal is due Aug. 22. Do ^{you} have any objection to a 25 day extension to file? If not please reply, so indicating and I will attach your response to my motion.

Thomas E. Player, Jr.

Player & McMillan

PO Box 3690

Sumter, SC 29151

Tel 803-775-2306

Fax 803-436-5960

E-mail tomplayer@sc.rr.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication

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8/17/2011

PLAYER & McMILLAN, L.L.C.
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SUMTER, SOUTH CAROLINA 29151

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Marvin E. McMillan, Jr.

August 17, 2011

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email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Daniel Darby vs. South Carolina Public Service Authority*
Case No.: 2011184586
P&M File No.: 2837

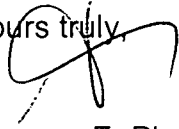
Dear Ms. Gee:

Please find enclosed the original and six (6) copies of Appellant's Motion for Extension of Time to serve the Record on Appeal, along with the original Proof of Service in the above referenced action.

Also enclosed is my firm's check in the amount of \$25 representing the filing fee for this Motion. Please return a clocked copy to me in the envelope provided.

By copy of this letter, I am serving same on counsel of record for the Respondent.

Yours truly,


Thomas E. Player, Jr.

TEP, Jr./jv
Enclosures

cc: Ms. Elizabeth H. Warner, Esquire
Mr. Benjamin L. Sadler, III, Esquire

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AUG 19 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 25, 2011

Thomas E. Player, Jr, Esquire
Player & McMillan, LLC
P.O. Drawer 3690
Sumter, SC 29151

Elizabeth Warner, Esquire
Ben Sadler, Esquire
South Carolina Public Service Authority
1 Riverwood Drive
Moncks Corner, SC 29461

Re: Darby, Daniel v. SC Public Service Auth
2011184586

Dear Counsel:

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

Furthermore, the caption should read as follows:

Daniel Darby,

Appellant,

v.

South Carolina Public Service Authority,

Respondent.

Any future filings by any party to this appeal must feature the above caption.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2011184586

RECEIVED
JUL 22 2011
SC Court of Appeals

Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

Revised Designation of Matter
To Be Included in the Record of Appeal by
Appellant
Daniel Darby

The Appellant Daniel Darby proposes the following to be included in the Record on Appeal:

1. Complaint;
 2. Answer;
 3. Final Order of Trial Court; signed by Judge Thomas W. Cooper, Jr., on October 14, 2010, and entered by the Clerk of Court on even date,
 4. Motion to Modify or Amend Judgment;
 5. Form 4 Order denying Plaintiff/Appellant's Motion to Reconsider, dated January 5, 2011, and entered by the Clerk of Court on even date therewith,
 6. South Carolina Supreme Court Decision Bell vs. SCPSA;
 7. Transcript of August 4, 2010 Hearing;
- The following Plaintiff's Trial Exhibits;
8. PL 2 HARZA Plat;
 - 9.. PL 12 Letter to John Land from South Carolina Public Service Authority;
 10. PL 13 Edward DuRant Testimony from Bell vs. SCPSA ;
 11. PL 13a Lower Court Order Bell vs. SCPSA;
 12. PL 15 Arial photo of Point Property;
 13. PL 16 Pages 10 & 17 of US Fish and Wildlife Publication;
 14. PL 17 Quit Claim deed to Darby from mother, aunt and

- Uncles;
15. PL 19 Deed from Davis Estate to Trustee;
 16. PL 20 Epinette's Oral Report;
 17. PL 21 Last Will and Testament of W. B. Davis;
 18. PL 22 Last Will and Testament of Marjorie Davis;
 19. PL 23 Two page map showing area leased US Fish & Wildlife;

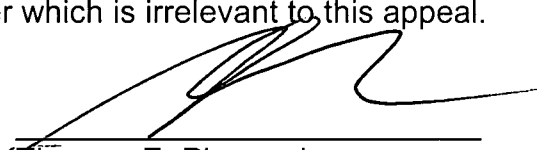
The following Defense Trial Exhibits;

20. D 1 Deed from Robert Hepburn Davis to Darby;
21. D 2 Clarendon County Tax Map #72;
22. D 3 Duvalle Elliott Plat;
23. D 4 Deed from Clerk of Court to SCPSA for Nelson Property;
24. D 5 SCPSA map 35.5;
25. D 6 1949 Deed;
26. D 7 SCPSA Drawing 4200-A10;
27. D 8 Map 35;
28. D 8a Enlarged Map 35;
29. D 9 Partition Deed Bell to Davis;
30. D 10 Sykes Plat;
31. D 11 Deed of Distribution from Marjorie Davis Estate ;
32. D 12 Deed to Robert Hepburn Davis;
33. D 13 US Fish & Wildlife Lease;
34. D 14 C Map C-72-J;
35. D 15 Referee's Report Bell vs. SCPSA;
36. D 16a Overlay of aerial photographs;
37. D 16b Overlay of aerial photograph;
38. D 16c Overlay of aerial photograph;
39. D 16d Overlay of aerial photograph;
40. D 16e Overlay of aerial photograph;
41. D 17 Composite aerial map showing relevant tracts;
42. D 18 Gordon McLeod Survey ;
43. D 19 Transcript of Duvalle Elliott Testimony from Bell vs. SCPSA .

44. Consent Order of Reference with Finality,
45. Defendant/Respondent's response to Plaintiff/Appellant's Motion to Reconsider dated Nov. 19, 2010,
46. Plaintiff's Reply Memorandum in Support of Motion to Reconsider

I certify that this designation contains no matter which is irrelevant to this appeal.

July 20, 2011



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-14-354

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SC Court of Appeals

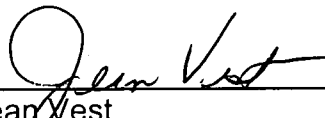
Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 20th day of July, 2011, served the Revised Designation of Matter To Be Included in the Record on Appeal by Appellant Daniel Darby in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461
Attorneys for Respondent

Sumter, South Carolina


Jean Vest
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July 20, 2011

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2011184586
P&M File No.: 2837

Dear Ms. Gee:

Regarding the above, please find a copy of the Appellant's Initial Reply Brief together with a copy of the Designation of Matter To Be Included In the Record on Appeal and proof of service in the form of a Certificate of Mailing.

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosures

cc: Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire

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JUL 22 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2011184586

Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

**INITIAL REPLY BRIEF ON BEHALF OF APPELLANT,
DANIEL DARBY**

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ATTORNEY FOR THE APPELLANT

RECEIVED
JUL 22 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

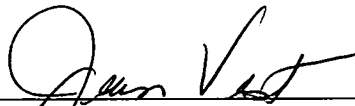
Case No. 2008-CP-14-354

Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 20th day of July, 2011, served the ***Initial Reply Brief on Behalf of the Appellant, Daniel Darby*** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
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Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Sumter, South Carolina

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TABLE OF AUTHORITIES

Cases

South Carolina Cases

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Other State Cases

<u>Bost Estate v. R.L. Wallace Const. Co., Inc.</u> , 199 N.C.App. 522, 681 S.E.2d 553 (2009).....	1
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ARGUMENTS

1. THE FINDINGS AND CONCLUSIONS OF THE TRIAL COURT ARE NOT SUPPORTED THE EVIDENCE AND ARE CONTROLLED BY ERRORS OF LAW

The Authority in its brief maintains that the standard of review is limited to a determination of findings of fact are reasonably supported by the evidence. We submit that the more appropriate declaration of the standard of review is that in an action at law the findings of the lower court are binding on appeal unless they are wholly unsupported by evidence or are manifestly influenced or controlled by error of law. Marsh Plywood Corp. v. Graham 240 S.C. 486, 493, 126 S.E.2d 510, 513 (S.C.1962)

The construction of an unambiguous deed is a question of law for the court, based on the intent of the parties as expressed within the four corners of the instrument. State v. Brazos River Harbor Nav. Dist. 831 S.W.2d 539, 542 (Tex.App.–Corpus Christi,1992) What the boundary is is a matter of law. Where it is located on the ground is a question of fact. Bost Estate v. R.L. Wallace Const. Co., Inc. 199 N.C.App. 522, 681 S.E.2d 553 (2009)

The relative weight to be given to evidence of location is a matter of law, and they rank in this order: (1) natural boundaries; (2) artificial marks, and (3) course and distance. Southern Realty and Investment Co. v. Keenan, 99 S.C. 200, 83 S.E. 39, 41-42 (1914). Rules of construction require the disregard of the reference to acreage in a deed and effect given to the area description established by clear boundaries. Yarbrough v. Collins 290 S.C. 76, 84, 348 S.E.2d 194, 199 (S.C.App.,1986)

Authority cites in support of its position the case of Wigfall vs. Fobbs, 259 SC 59, 367 S.E. 2d 156. That case, however, did not involve a disputed boundary line but a question of title based on

adverse possession.

In addition to Wigfall, Respondent cites the case of Bodiford vs. Spanish Oaks Farms, Inc. 317 SC 359 et al, 455 S.E. 2d 194, (SCCT App. 1995). In Bodiford, the question was the location, on the ground, of a boundary line identified as the high-water mark of a mill pond which had been abandoned and that location was determined by the court appointing a surveyor to locate the high-water mark.

Though Darby submits that the findings and rulings of the court are not reasonably supported by a fair preponderance of the evidence, the ruling by the lower court that the boundary line in question should be located on the ground by attempting to replicate thereon the outline of the drawing referenced in the 1949 deed is controlled by an error of law in that it disregards long recognized rules governing the location of boundaries as set forth and argued in the appellant's brief.

2. THE TRIAL COURT ERRED IN CONCLUDING THAT THE BOUNDARY LINE IS LOCATED BY THE BEST ATTEMPT AT REPLICATING ON THE GROUND THE DRAWING REFERENCED IN THE DEED TO DARBY'S PREDECESSOR IN TITLE.

The lower court ruled that the Darby has a right to have his boundary line located. The Respondent takes no exception to that ruling. The only evidence as to where the property line is located on the ground is that of the C-Map which was confirmed by the Elliott and McLeod surveys.

The court did not find that the depiction of the approximate normal high-water mark on the drawing referenced in the 1949 deed was accurate as to, or approximated, its location on the ground. In fact, the reasonable inference to be drawn from the wording of the ruling is that the location of the high-water mark didn't matter. The order expressly states that the court is opting to locate the boundary based on the drawing and acreage stated rather than the actual high-water mark plus one hundred feet. (Tr Order Jan. 5, 2011)

The Respondent concedes that the boundary line in question is defined by the Bell case. While that decision defines the boundary as a line corresponding to the 76.8 foot elevation contour at a distance of 100 feet inland, it does not locate that line on the terrain. In recognition of that fact, the referee in that case included in its recommendation the following:

I find from Plaintiff's exhibit #3 that the Defendant did on May 26, 1975, enter into a lease agreement with the United States Fish and Wildlife Service which included the marginal land lying between Plaintiff's property and Lake Marion for the operation and administration as part of the Santee National Wildlife Refuge. Both

parties conceded that the property line between the Plaintiff's property and Defendant's property along Lake Marion is completely unidentifiable upon the ground and I so find. The lease from the Defendant to the United States Fish and Wildlife Service specifically states that the property would be used as refuge, resting, nesting, breeding and feeding grounds for migratory birds and other wildlife. This use carries with it the power of the federal government to incarcerate and prosecute acts of trespass upon said lands. With the line undefined upon the ground, the Plaintiff, his guests, invitees and licensees would be subject to such incarceration and prosecution should they trespass upon or engage in other restrictive activity within such refuge.

I find that the Plaintiff is entitled to be furnished by the Defendant a survey with visible markers upon the ground of the line between the Plaintiff's property and the property of the Defendant leased by it to the United States Fish and Wildlife Service.

(Special Referee's report, p 141)

The circuit court judge, in adopting the recommendation made by the referee states with reference to the normal high-water mark referenced on the plat accompanying the 1949 deed:

It is therefore, Ordered, Adjudged and Decreed that the report of the Referee in this matter dated March 22, 1979, is hereby confirmed and made the Order of this Court in all particulars not inconsistent with

the balance of this Decree; and it is

Further Ordered, Adjudged and Decreed that the Complaint be dismissed with prejudice, and that the Defendant furnish the Plaintiff, as soon as practicable, with a survey with visible markings upon the ground of the line between Plaintiff's property and the property that the Defendant leased by it to the United States Fish and Wildlife Service; (Circuit Court Order from Bell case, page 143-144).

The C-maps, which show the contour line with the markers delineating a line at a distance 100 feet inland, were prepared at or about the time of the Bell litigation. At the hearing in the lower court the following exchange between the Judge Cooper and Ms. Warner took place relative to the C-maps:

THE COURT: Okay. Ms. Warner, the C-map does, of course, indicate certain concrete -- or certain marked points by the surveyor at the time for the Authority and they are indicated by "P" numbers, specifically the map that I'm looking at and the area that I'm looking at is "P"—well they start at P-9 -- P-209 and going through "P"-219.

THE COURT: Mr. Elliott, when he did his survey, of course, located those and indicated on his survey that those were old Santee Cooper monuments and he designated that as SCM, or something to that effect, as I recall, SCMF, Santee Cooper Monuments that he found. Tell me, if, - - the significance, if any, of the fact that Santee Cooper

had set those boundaries there at some time in the past and what they were intended to delineate.

MS. WARNER: Your Honor, from the record from the Bell vs. South Carolina Public Service Authority trial...

THE COURT: Uh-huh.

MS. WARNER: ...it appears that a number of monuments were put out on the site during that time period...

THE COURT: Uh-huh.

MS. WARNER: ...and I can't really tell you which were put out there during that time period and which may have existed

previously, but it does appear that the predominate amount of the monuments were put out a long time ago but not back to 1949.

They were put out as a part of the work that was done with regard to the '77 survey which was taking place at a -- at or about the time of that trial. It actually appears during that trial.

(Hearing Transcript P19, L25-P21, L8)

By letter dated September 23, 1974, in response to Senator John C. Land's inquiry regarding the boundary on behalf of Darby's grandfather, the general manager of the Authority writes: "Before a lease is signed with the US Fish and Wildlife Service it will be necessary to determine the contour line to be used in the lease for the Pine Island area and to make a survey accordingly. We will keep you advised of any developments regarding this matter." (John C. Land letter).

A US Fish and Wildlife publication showing the boundaries of the property leased from the

Authority was introduced at trial. The configuration of the Pine Island area shown in this publication conforms to the boundary shown on the C-Maps and Elliott and McLeod surveys. (Hearing Tr. P 61 L1- P62 L4, TR Exh. 16 pages 10 and 17)

US Fish and Wildlife signs designating its boundary are located along the boundary shown on the C-maps (Hearing Transcript p. 54, L. 22 through p. 58, L18 Photos of USFW signs, Trial. Exhs. 11 and 17).

Darby first became aware of the existence of the C-maps in the summer of 2007 in a meeting with the Survey Department and Property Department at the offices of Authority. Although the Authority's representatives expressed a desire to investigate further, he was informed that the boundary line was that represented on the C-Maps. (Tr P 50, L24-P53,L10)

Respondent's Statement of Facts, includes: "SCPSA sold off parcels it determined were not required for the Hydro-electric and Navigation project. Included in these conveyances was a large transfer to W.B. Davis, Jr. and Ralph Bell" (respondent's Brief P4). As stated, the purpose of the 1949 conveyance was to sell parcels it determined were not required for the Hydro-electric and Navigation project. These properties were described by the deed as those inland of and at a distance beyond 100 feet from the normal high-water mark which was later defined in the Bell case as the 76.8 foot elevation contour line. The Authority presented no evidence at trial suggesting that special treatment was to be given to the portion of the property now owned by Darby.

The trial court's interpretation of the 1949 deed suggests the reference on the drawing to (and the judicial determination in the Bell case of the meaning of) the "high-water mark" is meaningless and that as to each parcel listed in the tabulation of acreage on the drawing, the

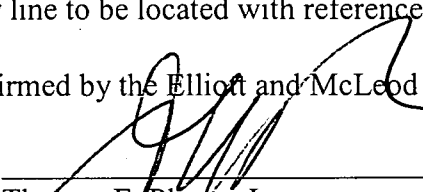
acreage stated and the graphic representation control the boundary location. This interpretation disregards the settled rules of law for the construction of deeds and location of boundaries.

Authority in its brief questions the methodology of Mr. Elliott in the preparation of his survey, but points to no evidence that it does not reflect the boundary with reference to the one hundred foot relationship to the 76.8 foot elevation contour line as monumented in accordance with the C-Maps. The evidence in this regard is that Mr. Elliott prepared his survey after meeting with Authority's survey department and confirmation by that department of the accuracy of the C-Maps. (P83, L14-P87, L5)

CONCLUSION

For the foregoing reasons Darby requests that this court reverse the trial order and direct the entry of judgment declaring the boundary line to be located with reference to the 76.8 foot contour line reflected on the C map and confirmed by the Elliott and McLeod plats.

July 20, 2011



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ATTORNEY FOR THE APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

JUN 30 2011

SC Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Retired Circuit Court Judge
Special Referee

Case No. 2008-CP-14-00354

South Carolina Public Service Authority, ...Respondent,

v.

Daniel Darby, ...Appellant.

DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD OF APPEAL BY RESPONDENT
SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

The Respondent South Carolina Public Service Authority proposes the following to be included in the Record on Appeal:

1. All items listed in the Appellant's Designation of Matter, which are incorporated herein by reference, except as modified herein;
2. Consent Order of Reference with Finality;
3. Final Order of the Court, signed by Judge Thomas W. Cooper, Jr., on October 14, 2010, and entered by the Clerk of Court on even date therewith, said Order improperly entitled "Initial Order of Trial Court" as Item 4 on Appellant's Designation of Matter;
4. Defendant/Respondent's Response to Plaintiff/Appellant's Motion to Reconsider, dated November 19, 2010; and
5. Form 4 Order denying Plaintiff/Appellant's Motion to Reconsider, dated January 5th, 2011, and entered by the Clerk of Court on even date therewith, said Order

improperly entitled "Final Order of Trial Court" as Item 5 on Appellant's Designation of Matter.

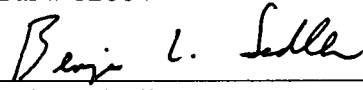
6. Overlay of aerial photographs, entered as Defense Exhibits 16 A-E and improperly designated in the Appellant's Designation in items number 36 through 40 as D 16a, D 11b, D 11c, D 11d and D 11e.

The undersigned certify that this designation contains no matter which is irrelevant to this appeal.

SOUTH CAROLINA PUBLIC
SERVICE AUTHORITY

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ATTORNEYS FOR RESPONDENT

June 29 2011
Moncks Corner, SC

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Retired Circuit Court Judge
Special Referee

Case No. 2008-CP-14-00354

South Carolina Public Service Authority, ...Respondent,

v.

Daniel Darby, ...Appellant.

PROOF OF SERVICE

I, the undersigned employee of the South Carolina Public Service Authority, Respondent in the referenced matter, hereby certify that I have this 29 day of June, 2011, served the Designation of Matter to Be Included in the Record on Appeal by Respondent and the Initial Brief of Respondent, on Thomas E. Player, Jr., Esq., attorney for the Appellant, by causing a copy of same to be deposited in the United States Mail, postage prepaid, with the return address clearly visible, addressed as follows:

Thomas E. Player, Jr., Esq.
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SOUTH CAROLINA PUBLIC
SERVICE AUTHORITY

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June 29, 2011
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June 29, 2011

RECEIVED
JUN 30 2011
SC Court of Appeals

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Darby v. South Carolina Public Service Authority

Dear Ms. Gee:

Enclosed for filing please find the original and one copy of Respondent's Initial Brief and Designation of Matter to be included in the Record of Appeal.

Please return a clocked copy to me in the enclosed stamped self-addressed envelope.

By copy of this letter I am serving opposing Counsel with a copy of same.

Thank you for your assistance.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Elizabeth Henry Warner', written over a horizontal line.

Elizabeth Henry Warner

EWH:cgh

Enclosures

cc: Thomas E. Player, Jr. w/enclosures

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Retired Circuit Court Judge
Special Referee

Case No. 2008-CP-14-00354

South Carolina Public Service Authority, ...Respondent,

v.

Daniel Darby, ...Appellant.

INITIAL BRIEF OF RESPONDENT

RECEIVED

JUN 30 2011

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL COURT CORRECTLY RULE THAT THE BOUNDARIES OF THE DARBY PROPERTY ARE AS SET FORTH IN THE TAW CAW PLAT AND NOT AS SET FORTH IN THE ELLIOTT SURVEY?

COUNTER-STATEMENT OF THE CASE

Respondent South Carolina Public Service Authority, also known as Santee Cooper, (“SCPSA”) is an agency of the State of South Carolina. Appellant Dan Darby (“Darby”) is an individual who owns a parcel of property (“Darby Property”) located in Clarendon County. SCPSA asks the Court to affirm the decision of the lower court ruling that the Darby Property, first conveyed in 1949 by SCPSA to Darby’s grandfather and predecessor in title and subsequently to Darby in 2007, consists of 3.8± acres, and that the correct legal description and property boundary of the Darby Property ultimately acquired by Darby is accurately depicted on the plat referenced in the 1949 deed.

This action was commenced by Darby’s filing of a Complaint which sought Declaratory Judgment Regarding Real Estate on July 14, 2008, in the Court of Common Pleas for Clarendon County. Darby sought an Order declaring him to be the owner of the property described on Exhibit A to the Complaint and further declaring that Darby was entitled to an easement for ingress and egress across the lands of SCPSA. Exhibit A to the Complaint is a survey that was performed after Darby purchased the Darby Property. (“Elliott Survey”). It purports to determine that the Darby Property consists of 26.64 acres, rather than 4 acres as set forth in the deed by which Darby acquired the property. (“Darby Deed”). The difference in acreage of the Darby Property between what is shown on the Darby Deed as conveyed to Darby and the Elliot Survey performed after the purchase and upon which Darby now bases his claim is approximately 22 acres.

SCPSA filed an Answer on August 20, 2008, asserting a general denial and numerous affirmative defenses. In particular, it alleged that the boundaries of the Darby Property had been established in a conveyance to Darby’s predecessor in title by a 1949 deed (“Bell and Davis Deed”) and referenced in a 1949 plat (“Taw Caw Plat”) and that the deed and plat established that the Darby Property consisted of 3.8± acres. It further asserted that the remaining 22 acres now claimed by Darby is owned and has been owned by SCPSA since 1941 when it acquired it as a part of the Santee Cooper Hydro-electric Project.

The matter was referred by consent to the Honorable Thomas W. Cooper, Jr., as Special Referee, with authority to enter final judgment pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, on May 14, 2010. A non-jury trial was conducted on August 4, 2010 with regard to the issue of the boundaries of the Darby Property depicted in Exhibit A of

Plaintiff's Complaint. The Parties stipulated that the access issue would be held in abeyance. Darby presented three witnesses who provided testimony on direct and cross-examination. The parties also entered into evidence numerous exhibits, including the deeds and plats associated with the original conveyance of the Darby Property by SCPSA to Darby's predecessor in title, all subsequent interim conveyances and the conveyance to Darby by his uncle in 2007.

The Court entered a Final Order¹ on October 14, 2010, finding that Darby had failed to meet his burden of proof and ruling, in essence, that the Darby Property has the boundaries as described in the 1949 Bell and Davis Deed and the referenced Taw Caw Plat and consists of 3.8± acres. The Court further ruled that the correct legal description of the Darby Property is set forth in the Taw Caw Plat and that the Elliot Plat was incorrect and did not accurately reflect the boundaries of the Darby Property. Additionally, the Court determined that Darby could not rely upon the placement of the "100 foot line inland of the normal high water line" shown in various locations on various documents to determine the boundaries of the tract in question, because the Taw Caw Plat referenced in the Bell and Davis Deed limited the size of the Property to 3.8± acres and clearly demonstrated SCPSA's intent with regard to the original conveyance of the Darby Property.

On October 28, 2010, Darby filed a Motion to Reconsider, Modify and Amend Judgment. On January 25, 2011, the Court issued an Order denying the Motion to Alter or Amend² and noting that a property line should now be established by duplicating the lines shown on the 1949 Taw Caw Plat. Darby commenced this appeal on February 2, 2011.

¹ Incorrectly identified by Appellant in his Designation of Matter and Initial Appellate Brief as "Initial Order of Trial Court".

² Incorrectly identified by Appellant in his Designation of Matter and Initial Appellate Brief as a "Final Order of Trial Court".

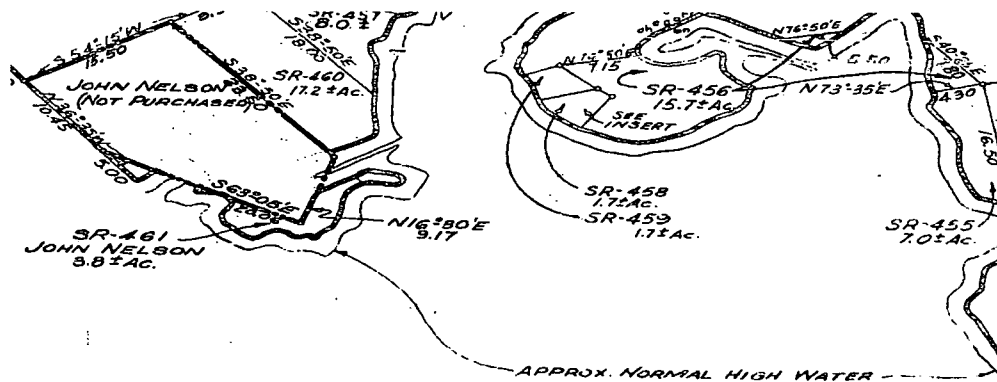
STATEMENT OF FACTS

On June 27, 2007, Darby acquired a parcel of property, (the Darby Property), located in Clarendon County from his predecessor in title by means of a deed which stated on its face a conveyance of "4.0 acres more or less", (the Darby Deed – Defense Exhibit 1), and which contained as its sole reference Clarendon County Tax Map Parcel 072-00-00-02 (Defense Exhibit 2), which contains 4.0 acres. In September of 2007, after the Darby Property had been conveyed to Darby, he had the Elliot Survey performed which alleged the property actually contained over 26 acres (Defense Exhibit 3).

In conjunction with the creation of the Pinopolis and Santee Reservoirs in the 1930s (now respectively Lakes Moultrie and Marion), SCPSA acquired thousands of acres of low-lying swamp land in Berkeley, Clarendon, and Orangeburg Counties. Among these acquisitions was a 28.2 acre parcel purchased from Willie Nelson, Rhetus Nelson, Johnnie Nelson and Cornelia Nelson. The deed (Defense Exhibit 4) issued by the Clerk of Court for Clarendon County refers to the boundaries, metes, courses and distances as delineated and shown on a plat, reciting the following statement: "Said tract of land is particularly described as Tract No. SR-461 on Land Map No. 35.5 prepared by Harza Engineering Company for South Carolina Public Service Authority, showing the lands to be used by said Authority in its Santee Reservoir." (Defense Exhibits 4 and 5).

Upon completion of the reservoirs, SCPSA sold off parcels it determined were not required for the hydro-electric and navigation project. Included in these conveyances was a large transfer to W. B. Davis, Jr. and Ralph Bell, Jr., which totaled 2,141.1 acres. All of this acreage was conveyed pursuant to a single deed, dated November 18, 1949, from SCPSA to Messrs Davis and Bell, which is recorded in the Office of the Register of Deeds for Clarendon County in Book C-14 at Page 21 (Bell and Davis Deed - Defense Exhibit 6). While the Bell and Davis Deed conveyed a total of 2,141.1 acres, the large acreage conveyed was composed of a number of smaller discrete and distinct parcels, including a 3.8± acre tract formerly owned by John Nelson. The Bell and Davis Deed is the deed recited in Paragraph 3 of Darby's Complaint as the instrument conveying the Darby Property from SCPSA to Darby's predecessor in title. The Bell and Davis deed references a plat entitled "Map of Lands Taw Caw Creek Peninsula," (Taw Caw Plat, Defense Exhibit 7) which is a tracing of the earlier plat prepared by the Harza Engineering

Company. (Defense Exhibit 8). Parcel SR-461, the parcel at issue, was shown on the referenced conveyance plat as follows:



Defense Exhibit 7, the "Map of Lands of Taw Caw Creek Peninsula" references SR-461 as "3.8 acres ±" both as an identifier on the property configuration and in the tabulation. See Defense Exhibit 7. As shown on the plat excerpt above, the boundary of the 3.8± acres designated as SR-461 is denoted by a "heavy line" (See Testimony of Edward DuRant, Plaintiff's Exhibit 13 pp. 35-36).

Messrs Bell and Davis eventually partitioned the 2,141 acres by a deed dated March 23, 1956, (Defense Exhibit 9) which also incorporated a plat by reference. Mr. Davis received 1,047 acres, including the 3.8± acre parcel designated as SR-461, shown on the partition plat, which is recorded in the Office of the Register of Deeds for Clarendon County in Plat Book 14 at Page 225 (Defense Exhibit 10).

The subject property passed by way of testate succession and Deed of Distribution dated July 17th, 2000 to Mr. Davis's heirs (Defense Exhibit 11), which references a 4 acre parcel of property with a TMS number identical to the reference in the Darby Deed (Exhibit 1) (See Schedule A, Number 8 on Deed of Distribution). Mr. Davis's heirs eventually deeded the property to Robert Hepburn Davis by Deed dated August 30, 2002 (Defense Exhibit 12). This deed, by the direct predecessor in title to Darby, uses the identical property description as that contained in Darby's Deed (Defense Exhibit 1) and describes the property to be conveyed as a parcel which contains "4 acres more or less" and references a TMS Parcel which contains 4

acres.³

Robert Hepburn Davis deeded the property to Daniel M. Darby and Robin Christina Darby by deed dated June 29th, 2007 (Darby Deed Exhibit 1). The Darby Deed contains the following legal description:

All that certain piece, parcel or lot of land, with improvements thereon, if any, situate, lying and being near the waters of Lake Marion in School District # 10, County of Clarendon, State of South Carolina, containing **4.0 acres**⁴, more or less, and being more particularly shown and delineated as Tax Map Parcel No. 072-00-00-002, on the 2002 Clarendon County Tax Map (shown thereon as being comprised of two separate parcels) and having such approximate shape and boundaries as is shown on said tax map above referred to which is hereby craved. This property is shown on the maps for Clarendon County as **tax map parcel # 072-00-00-002**.⁵

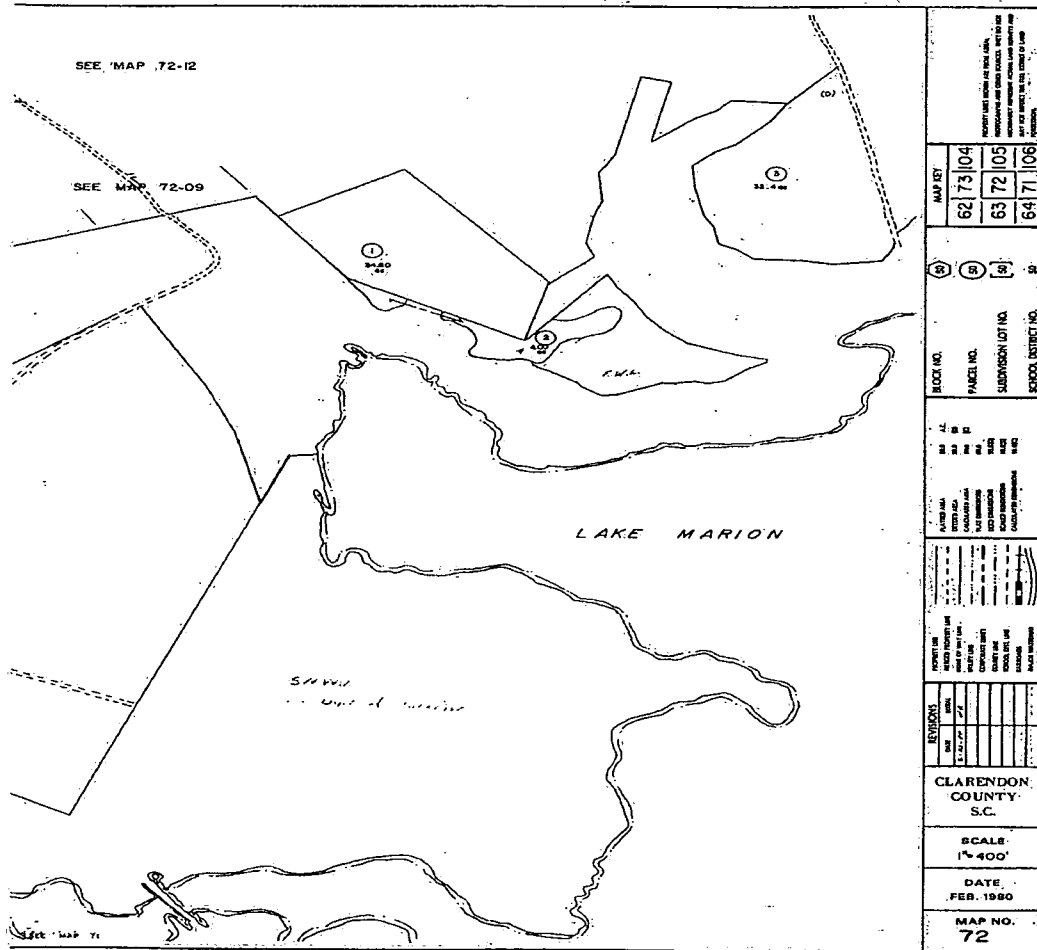
The consideration for the conveyance is stated to be \$12,000.00.

³ Darby is the nephew of Robert Hepburn Davis, who is the son of W. B. Davis, Jr., the original grantee from SCPSA (R. p. 50).

⁴ Emphasis in the original

⁵ Emphasis in the original

Tax parcel #072-00-00-002(Defense Exhibit 2) is configured on the Clarendon County Tax Maps as shown:



The real property records for Clarendon County designate Tax Parcel # 072-00-00-002 as being comprised of 4.0 acres. The immediately adjacent parcel, which is part of the additional property claimed by Darby, has been consistently designated on several iterations of the Clarendon County tax maps with the annotation "FWS" ("U.S. Fish and Wildlife Service") (See Defense Exhibit 2). In addition this adjacent parcel, a portion of which Darby claims, has never been assigned a tax map number.⁶ SCPSA has leased the adjacent property which Darby claims to U.S. Fish and Wildlife Service since 1941. (Defense Exhibit 13).

⁶ It is common practice for lands owned by Santee Cooper not to have an assigned tax map number since there is no taxation of state owned parcels.

On July 14, 2008, Darby filed suit against SCPSA seeking a declaratory judgment that the deed by which SCPSA conveyed property to Darby's predecessor in title in 1949 was actually intended to convey 26.46 acres rather than 4.0 acres more or less. The basis for the claim was a survey that Darby had performed by Duvalle Elliott in September of 2007 (Elliott Survey, Defense Exhibit 3), 2 months after Darby purchased the property, and which was based upon an aerial map (often referred to as a "C" map) obtained by SCPSA in 1977 in connection with its FERC license (Defense Exhibit 14).

Darby presented three witnesses at trial. The first, Robert Eppinette, is a soil scientist. The crux of his testimony for Darby was that the elevation of the property had remained unchanged during the time period from the original transaction involving the Darby Property until Darby's acquisition. Upon cross examination, Mr. Eppinette admitted that he had not done a topographic study of the property, had not made any measurements of the lake levels and was unable to determine property lines based upon the study of the soil at the property. (Transcript pp. 48-49). He offered no testimony regarding the specific location of any boundary lines or elevation contour lines, nor did he offer any testimony about the accuracy of the Taw Caw Plat (Defense Exhibit 7) or the "C" Maps (Defense Exhibit 14).

Darby also testified at trial. He readily admitted that when he purchased the Darby Property he thought he was buying 4 acres (Transcript p. 68, 7-9, Transcript p. 69, 1-4), that the property description on the deed referenced a 4 acre parcel, and that he had been paying taxes on a 4 acre parcel since he purchased the Property. (Transcript p. 70). Darby testified that he did not have a title search done on the Darby Property before he purchased it and that he did not have the Elliott survey performed until after he purchased the property. (Transcript p. 69). He further admitted that he had no knowledge with regard to the original transaction between SCPSA and Darby's predecessor in title, which occurred prior to his birth. (Transcript p. 68). Despite these admissions, Darby stated that he was seeking to add 22 acres to the parcel he purchased. (Transcript p. 69, 7-9).

Finally, Duvalle Elliott testified for Darby. He is a land surveyor who does most of his work in the Clarendon County area and who was hired by Darby to do a survey of the Property after he purchased it. (Transcript p. 76). Mr. Elliott described the survey as a "routine survey" (Transcript p. 77). However, instead of basing his survey upon prior recorded plats and records found in the RMC office, he located property corners for this survey based upon an unrecorded

"C" Map which "as far as [he] knew" showed the property lines (Transcript p. 79) (see also Transcript pp. 96-97). He noted that the "C" map "was the only evidence available, and so basically I just assumed what they had done was correct"...and "just basically re-measured what they had done" (Transcript p. 81). He also admitted that the "C" Map, the very document upon which he solely based his survey, showed that only a 4 acre parcel described in the Darby Deed was owned by Darby's immediate predecessor in title and that the additional 22 acres he delineated on his survey was shown to be owned by the United States Fish and Wildlife Service (Transcript pp. 107-108). Yet he testified that his survey represented the true property line for the property (Transcript p. 89).

Upon further examination Mr. Elliott testified that the deed transferring the Darby Property to Darby stated on its face that it was granting "4 acres more or less", that to a surveyor "4 acres more or less" meant somewhere between 3 and 5 acres and that he would not expect a deed transferring 4 acres more or less to be conveying 26 acres. (Transcript p.91). He further testified that the purchase price on the face of the deed, \$12,000.00, was much more likely a price for a 4 acre parcel than a 26 acre parcel. (Transcript p. 98).

With regard to preparation of his survey, Mr. Elliott admitted that he had not reviewed the Taw Caw Plat (Defendant's Exhibit 7) prior to preparing the survey and that it was something he could have used in preparing the survey. (Transcript pp. 92-93). Upon review of the Taw Caw Plat at trial, Mr. Elliott confirmed that it was the plat referenced in the Bell and Elliott Deed, and that it, and every subsequent deed and plat in Darby's chain of title (Defense Exhibits 6, 7, 11, 12, 1) and the tax map (Defense Exhibit 2), referenced the Darby Property as a 3.8± acre or 4 acre parcel. (Transcript pp. 100-105).

He also testified that the Taw Caw Plat showed property lines being 100 feet from the high water mark, but that he did not know where the high water mark was in 1949 when the plat was prepared (Transcript p. 101). He could not have used this high water mark in his survey work since he did not have the Taw Caw Plat at the time he did the work. Mr. Elliott had also testified previously, in the trial of Bell v. South Carolina Public Service Authority, that he doubted very seriously if the 75 foot contour as of 1949 would be the same as it was in 1979. (Defense Exhibit 19, pp.40-41). He concluded by testifying that the only document in evidence which designated Darby's property as being 26 acres was the survey that he performed in September of 2007 (Defense Exhibit 3) (Transcript p. 117).

Neither Mr. Elliott, nor any other witnesses, provided any testimony that the survey Darby relies upon in his Complaint and asks the court to rely upon as the basis for granting him an additional 22 acres, was based in any way upon any contour or boundary lines that were in existence in 1949. Rather his survey is based upon contour lines from an unrecorded document created decades after the transaction between SCPSA and Darby's predecessor in title.

ARGUMENTS

As a preliminary matter, SCPSA acknowledges that the Appellant is entitled to define the Issues on Appeal as he sees fit. However, once defined, he is bound by this designation. “Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal.” Rule 208(b)(1)(B), SCACR. See also State v. Black, 319 S.C. 515, 462 S.E.2d 311 (S.C. Ct. App. 1995), holding that under the SCACR, an issue is not preserved when not set forth in the statement of the issues on appeal. Appellant’s brief sets forth three Issues on Appeal and his brief appears to tangentially address portions thereof; however, the seminal question before this Court is whether the trial court correctly ruled that the boundaries of the Darby Property are as set forth in the Taw Caw Plat.

1. THE STANDARD OF REVIEW ON APPEAL REQUIRES AFFIRMING THE DECISION OF THE TRIAL COURT

Darby’s Appellate Brief requests “that this court reverse the trial order and direct entry of judgment declaring the boundary line to be located with reference to the 76.8 foot contour line located on the C map and confirmed by the Elliott and McLeod⁷ plats.” (Appellant’s Brief P. 17) In order for the Court to reverse the lower court it must find that the lower court’s findings of fact were without evidence to reasonably support them. Wigfall v. Fobbs, 259 S.C. 59, 367 S.E. 2d 156. As this Court has noted specifically,

“A boundary dispute is an action at law. [cites omitted] In an action at law, on appeal of a case tried without a jury, the findings of fact of a judge will not be disturbed unless found to be without evidence which reasonably supports the judge’s findings. [cites omitted] That the parties referred the case to a special referee does not change the scope of review, when, as here, the referee enters final judgment.”

Bodiford v. Spanish Oaks Farms, Inc., 317 S.C. 539 at 544, 455 S.E. 2d 194 at 197 (S.C. Ct. App. 1995).

As set forth in the Counter-Statement of Facts, there is overwhelming evidentiary support for the lower court’s finding that the Darby Property consisted of 4 acres more or less, that the

⁷ Darby’s reliance on the McLeod Plat (Defendant’s Exhibit 18) as any evidence supporting his position seems misplaced. The McLeod Plat, prepared for Santee Cooper’s lessee, the United States Fish and Wildlife Service, on December 2, 2008, after the commencement of this lawsuit, clearly identifies the additional property as disputed based upon the Elliott Plat. Further, Darby testified that because of the lawsuit Mr. McLeod declared the property to be disputed and took no further action until the issue was resolved (Transcript p. 73). Therefore, the McLeod Plat provides no evidence of Darby’s ownership of the disputed property.

boundaries of the Darby Property were as described in the 1949 Bell and Davis Deed and Taw Caw Plat, and that the Elliott Plat, which was based upon a 1979 "C" map was incorrect and did not accurately reflect the boundaries of the property. The court's findings were based upon review of over 50 years of consistent deed descriptions and plat references for the Darby Property, and the admissions of Darby and Mr. Elliott regarding the property acquisition and survey. As admitted by Mr. Elliott on the stand, the only evidence in the record which supported the claim that the property totaled 26.4 acres as opposed to 4 acres was his survey, which was based upon an unrecorded internal map that was not suitable as a conveyance plat and which did not exist at the time of the original conveyance. (Transcript p. 109, p. 117). Clearly the lower court's decision was supported by reasonable evidence and should not be overturned.

2. THE TRIAL COURT CORRECTLY RULED THAT THE APPELLANT HAS FAILED TO SATISFY HIS BURDEN OF PROOF.

SCPSA is an agency of the State of South Carolina. As the Court noted in its Final Order,

The Plaintiff has failed to satisfy his burden of proof. The Plaintiff obviously has the burden of proof, in this case as in any case, by the greater weight of the evidence. Additionally, because the Defendant is a state agency, the case of State of South Carolina v. Fain, 273 SC 748, 259 SE2d 606 stands for the proposition that the State comes into Court with presumption of title, and if the individual is to prevail, he must recover on the strength of his own title. Therefore, a grant or deed by the government to an individual is construed most strongly against the individual and in favor of the Government.

Final Order p. 5 of 9, citing State v. Fain, 273 S.C. 748, 259 S.E.2d 606 (1979).

Pursuant to Fain, SCPSA has the presumption of title to the disputed property. In order for Darby to prevail, he must recover on the strength of his own title. However, rather than there being any strong evidence to support his claims to title, the overwhelming weight of the evidence is in favor of SCPSA's ownership of the disputed property. As noted in the Counter-Statement of Facts, and in Section 1 of the Argument above, all of the documentary evidence and testimony, with the sole exception of the Elliott Plat commissioned by Darby after he bought the property, shows that the Darby Property consists of 4 acres with the boundaries as set forth in the Bell and Davis Deed and the Taw Caw Plat. Also compelling is that Darby's own deed states

that he purchased 4 acres “more or less” and that he admitted at trial that at the time of the purchase he believed he was purchasing only 4 acres. As Judge Cooper noted in his Denial of Darby’s Motion to Reconsider, “This rationale was not based upon the ‘whim of the fact finder’, but on the clear and unmistakable statement of a conveyance of 3.8 acres or 4 acres, more or less, in each conveyance of the chain of title.” (Order Denying Motion to Reconsider). The Court correctly ruled that Mr. Darby failed to meet his burden of proof. Therefore, this Court should affirm the lower court’s determination that Darby failed to meet his burden of proof in the lower court, and dismiss his appeal.

3. THE TRIAL COURT CORRECTLY RULED THAT THE DEED INTO PLAINTIFF’S PREDECESSOR IN TITLE CONVEYED FOUR (4) ACRES, MORE OR LESS.

The Final Order provides both a legal and factual basis for the conclusion that Darby purchased only 4 acres. As stated above, SCPSA submitted voluminous documentary evidence providing a historical chain of 3.8± or 4 acres. In particular, SCPSA submitted evidence which showed clearly that the Darby Property had been specifically located, surveyed and designated on a plat as containing 3.8 ± acres at the time of the original transaction in 1949. This specific location, survey and designation of the Darby Property was a distinct act of identification as opposed to the more general designation of contours or high water lines. As the lower court noted in its Final Order:

The deed from Santee Cooper to the Plaintiff’s predecessors-in-title (“the Davis and Bell Deed”), dated November 18, 1949 and recorded in Book C-14 at page 21 in the Office of the Register of Deeds for Clarendon County, contains the following recitation regarding the location of the property:

“tracts nos....SR-461....located above the one hundred (100) foot strip of land shown on the map hereafter referred to as lying between the lands herein conveyed and the approximate normal high waterline of the Authority’s Lake Marion Reservoir, said tracts being more specifically shown and designated on a plat prepared by the Engineering Department of the Authority, entitled “Map of Lands of Taw Caw Creek Peninsula”, which plat is designated as Drawing No. 4200-A10 (Index A-1306) a print of which is attached here and made a part hereof.”

Drawing No. 4200-A10 referenced in the above deed is a plat prepared by Santee Cooper and dated September 27, 1949. It is attached hereto and incorporated by reference. The Plat conveys multiple parcels totaling 2,141.1 acres, and identifies separate parcels with their respective acreage. Most significantly, the Plaintiff’s

parcel is shown thereon as SR-461 and is denoted to contain "3.8± Ac.". Further, the tabulation table located on the face of the plat states that SR-461 is comprised of 3.8± acres. Drawing No. 4200-A10 also shows the location of the "Approximate Normal High Water Line".

Final Order p. 3 of 9.

The lower court correctly ruled that Darby was bound by the plat description set forth in the Taw Caw Plat, noting "South Carolina Courts have consistently held that 'when maps, plats or field notes are referenced in the grant or conveyance, they are incorporated into the instrument, bind the grantor and his successors and are usually held to furnish the true description of the boundaries of the land.'" (Final Order p. 5 of 9), and citing, South Carolina Code Section 30-5-250, Carter, South Carolina Boundary Compendium (2d ed. 2003); Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 16, S.E. 2d 816, (1941); Hammond v. Lindsay, 277, S.C. 182, 284 S.E. 2d 581 (1981); Hobony Club v. McEachern, 272 S.C. 392, 252 S.E. 2d 133 (1979).

The only document admitted into evidence by either party which indicates that the Darby Property consists of 26.64 acres was prepared by the surveyor retained by Darby to perform a post-closing survey. The surveyor's own testimony, wherein he admitted almost exclusive reliance on the "C" map (Defense Exhibit 14), calls into question the validity of his map as a legal survey. Instead of basing his survey upon the numerous prior recorded plats and records found in the RMC office (See Exhibits 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11), he located property corners for this survey based upon an unrecorded "C" Map which "as far as [he] knew" showed the property lines (Transcript p. 79) (see also Transcript pp. 96-97). He noted (incorrectly since there were numerous other plats which were public records and available for his review) that the "C" map "was the only evidence available, and so basically I just assumed what they had done was correct"...and "just basically re-measured what they had done." (Transcript p. 81). He also admitted that the "C" Map, the very document upon which he solely based his survey, showed that only a 4 acre parcel described in the Darby Deed was owned by Darby's immediate predecessor in title and that the additional 22 acres he delineated on his survey was shown to be owned by the United States Fish and Wildlife Service (transcript pp. 107-108). Yet he testified that his survey represented the true property line for the property (Transcript p. 89).

The Standards of Practice Manual for Surveying in South Carolina, effective June 26, 2009, which restates Chapter 49, Article 4 of the South Carolina Code of Regulations, contains the following provision:

“Maps prepared partially or entirely from reference or source data, such as compiled maps, do not represent land surveys as defined herein, and shall be clearly marked accordingly. Compiled maps must have a prominently displayed statement that the said document does not represent a land survey and is unsuitable for deeding of property or recordation.”

Further, as stated in *Corpus Juris Secundum*:

“The essential rule governing resurvey is to follow the steps of the first surveyor, and, a resurvey not shown to have been based upon the original survey is inconclusive in determining boundaries. A precisely accurate resurvey cannot defeat ownership rights flowing from the original grant and the boundaries originally marked off.”

11 CJS Boundaries § 124.

A learned treatise on the subject provides that:

“The purpose of resurveys is to relocate the lines described in an existing conveyance. How this shall be done is a question of interpretation of the meaning of a conveyance. Courts interpret documents. Although the legislature may regulate how a conveyance shall be formed, once it is formed, the courts interpret, in light of the laws existing as of the date of the deed, where the location shall be. All surveys based on the record are of this nature; the courts interpret their meaning and location.”

Evidence and Procedures for Boundary Location, 3rd Edition, Brown, et al., p. 3044, (John Wiley and Sons, Inc.) 1994.

The Elliott Survey upon which Darby asks this court to rely falls woefully short of meeting these surveying standards and the lower court properly ruled that it was incorrect.

Darby has attempted to color the original conveyance as one of 2,100 acres, thereby making his claim for six times the acreage shown on the face of his deed, appear to be “less than 2% of the total acreage conveyed”. (Initial Brief of Appellant, Pg. 12). While this misconstruction may reflect the post-closing plans of Darby, it neglects the overwhelming volume of documentary evidence introduced, commencing with the acquisition deed and plat, and progressing through from the deed out of SCPSA into Darby’s predecessors, all the way through to the deed into Darby in 2007, all of which specifically call out acreages to the tenths or

hundredths, and more importantly reference this particular parcel (SR-461) as containing either 3.8± or 4 acres, but never 26.64 acres.

The Court of Appeals should affirm the lower court's decisions that the Darby Property boundaries are as set forth in the Bell and Davis Deed and the Taw Caw Plat and that the boundaries set forth in the Elliott Plat are incorrect.

4. THE TRIAL COURT CORRECTLY RULED THAT THE BOUNDARY LINE SEPARATING THE LITIGANTS' PROPERTY IS ACCURATELY SHOWN ON THE DRAWING REFERENCED IN THE DEED OF CONVEYANCE INTO PLAINTIFF'S PREDECESSOR IN TITLE.

At the conclusion of Darby's brief, he requests that the Court reverse the trial order and direct the entry of judgment declaring the boundary line to be reference to the 76.8 contour line reflected on the "C" map. (Appellant's Initial Brief p. 17) However, there is neither factual nor legal support for this position.

As noted above, plat references in recorded deeds control. South Carolina statutory and case law both hold that when maps, plats or field notes are referenced in the grant or conveyance, they are incorporated into the instrument, bind the grantor and his successors and are usually held to furnish the true description of the boundaries of the land. South Carolina Code Section 30-5-250 states that when a deed refers to boundaries, metes, courses, or distances of the property conveyed which are shown on any recorded plat, and when the deed refers to the book and page number of the recorded plat, the boundaries, metes, courses or distances as shown on the plat control. See Blue Ridge Realty Company v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965). Drawing No. 4200-A10, (the "Taw Caw Plat") referenced in the deed from SCPSA to Darby's grandfather, provides the true location, boundaries, and quantity of land granted by SCPSA to Darby's predecessor in title.

While Darby makes reference to the high water mark in his Statement of Issues on Appeal, the issue is not properly before the Appellate Court. Darby's brief focuses almost entirely on the argument that the boundary must be based on the "actual high water mark rather than an inaccurate graphic representation thereof." This argument fails on multiple fronts, the most basic being that he never introduced evidence regarding natural boundaries or the Rules of Relative Weight of Conflicting Elements at trial. In fact, Darby's surveyor testified that his field survey was based solely on man-made monuments, not natural boundaries. The record is thoroughly developed on this point, by both direct and cross examination:

Q: Tell me what you did to go about trying to find the property lines for Mr. Darby and – and why you came up with the survey that you did.

A: Well, basically I – I got the adjoining plats, what I thought were the adjoining plats which was a C-map and plat of the property of Mr. Martins and just put them together to make a – a closed land survey showing the property lines and the property corners that I found. (Transcript, p. 77, 17-25)

Q: All right. And once you got the C-map, then what did you do as far as performing the survey.

A: I located the property corners using the C-map and the other adjoining piece of property. (Transcript, p. 80, 10-13)

Q: -- do you do some independent verification to make sure that that's in the proper location?

A: Well, in this particular case, that [iron pipes] was the only evidence available, and so basically I just assumed that what they had done was correct. (Transcript, p. 81, 15-19)

Q: All right. And – and, well, in ---in—well, I guess, further in the way of verification, when you do your survey, and do you use their measurements or you re-measure and you do your own courses or how do you do that?

A: Well, I just basically re-measured what they had done, and... (Transcript p. 81, 20-25)

Q: And you didn't have a copy of [the 1949 conveyance plat from Santee Cooper] which is the map...

A: No, ma'am.

Q: ...of Taw Caw. **And the C-map was the sole reference that you used for your survey.**

A: **That's correct.** (emphasis added) (Transcript p. 116, 11-17.)

Darby's arguments regarding the Rules of Relative Weight of Conflicting Elements have no bearing since he failed to introduce any evidence at trial regarding this point. "Generally, claims or defenses not presented in the pleadings will not be considered on appeal." See McNeely v. South Carolina Farm Bureau Mut. Ins. Co., 259 S.C. 39, 190 S.E.2d 499 (1972). This rule is consistent with the general restriction that one cannot present and try a case on one theory and then attack the result below by presenting another theory on appeal. Appellate Practice in South Carolina, Second Edition, Toal, et al., pg. 56. It is well settled that one cannot present and try his case on one theory and then change his theory on appeal. Gurganious v. City of Beaufort, 317 S.C. 481, 454 S.E. 2d 912 (Ct. App. 1995).

Despite failing to present any evidence regarding natural boundaries at trial, Darby still attempted to argue the issue before the lower court. The trial court addressed the issue in its Final Order, relying on the case of Smith v. Durant, 113 S.E. 2d 349, 236 SC 80 (1960), to find that while natural boundaries are traditionally a primary determinant of property description, the rule is not inflexible. The vital question in determining the property conveyed is "the intent of the Grantor at the time the deed is executed." (Trial Order, citing Smith v. Durant). It is not reasonable to believe that the intent of the grantor was to grant 26 acres when the clear evidence contained on the Taw Caw Plat was that the intent was to grant a 3.8± parcel.

In the absence of any evidence that the intent of SCPSA was to grant 26 acres to Darby's predecessor in title, Darby relies on conjecture in his brief: "It follows that the quantity **was most likely** estimated by reference to the graphic" (Initial Brief of Appellant, p. 11); "The proceedings in the Bell case **do not suggest** that the quantity of land conveyed was a factor in establishing the boundary." (Initial Brief of Appellant, p. 11); "The **reasonable inference** is the opposite." (Initial Brief of Appellant, p. 11); "**Logic suggests** the existence of a conflict between the competing elements..." (Initial Brief of Appellant, p. 15); "It **would seem** that the evidence necessary to warrant deviation..." (Initial Brief of Appellant, p. 15). (emphasis added).

The Plaintiff's conjecture is defeated by the testimony presented in the Bell trial (Plaintiff's Exhibit 13, Defendant's Exhibit 15), wherein tangible evidence of the methodology utilized to establish the boundary line was presented. SCPSA does not have to rely on conjecture or speculation to support its position. The evidence, as reviewed by the Special Referee in the Bell action, affirmed by the Circuit Court Judge and the South Carolina Supreme Court, and then

reviewed afresh by the trial court in this action, all confirm that the location of the boundary line is as shown on the Taw Caw Plat referenced in the deed of conveyance from SCPSA to Darby's predecessors in title and not the location set forth in a "C" map which was created decades after the transfer or the Elliott Survey, which was created based not upon determining natural boundaries, but upon reliance on the unrecorded C-Map not in existence at the time of the transfer⁸.

Since both parties have relied on the ruling of the South Carolina Supreme Court in the matter of Bell v. South Carolina Public Service Authority, 277 S.C. 556, 291 S.E.2d 196 (1982), this three-decade old law suit warrants close examination. Although Darby argues the Bell action supports his current position, a full review of the testimony and judgment show that his reliance is misplaced. The Bell action clearly confirmed the accuracy of the Taw Caw Plat, the very plat found to be controlling by the lower court in this case.

The Bell action was brought by Darby's grandfather's co-tenant, and was a post-partition action regarding some of the parcels conveyed in the Bell and Davis Deed. The court addressed three principle issues, only one of which is relevant to the current matter, namely:

(1) The location of the boundary line between the Plaintiff's property and the Defendant's property along Lake Marion which was stated to be 100 feet from the "approximate normal high water line of the Authority's Lake Marion Reservoir."
(Defense Exhibit 15)

The Bell court took testimony from the draftsman who prepared the Taw Caw Plat, Edward W. DuRant. The transcript of Mr. DuRant's Testimony was introduced as evidence in the current trial (Plaintiff Exhibit 13). Mr. DuRant testified that he first started engineering for the WPA, and then went to work as a map draftsman for Harza Engineering in 1938. After returning from military service, he was employed by SCPSA as a draftsman, and in that capacity, he prepared the Taw Caw Plat, which had been introduced as an exhibit in the Bell action as well. (Plaintiff Exhibit 13, p. 33).

Mr. DuRant testified that he prepared the Taw Caw Plat by reference to Harza Land Maps 35 and 36, which he also helped prepare and were based on surveys performed by Harza Engineering. (Plaintiff Exhibit 13, p. 34). He testified that on the Taw Caw Plat the light line

⁸ Attention is drawn to the fact that the "C" Map so heavily relied upon by Darby (Defense Exhibit 14) was not in existence when the Bell law suit was filed. Despite this fact, Darby doggedly alleges the Bell suit supports his claim for additional acreage.

exterior of the heavy line is the approximate normal high water line, and the interior heavy line is the hundred foot strip boundary. (Plaintiff Exhibit 13, pp. 35-36). This testimony provides full support for the lower court's decision as a review of the Taw Caw Plat shows that the heavy line around SR-461 is distinct and is a clear boundary denoting a 3.8± acre parcel.

The Special Referee in Bell held that "from personally examining the overlay, I found the testimony to be accurate." (Defense Exhibit 15).

The Judge's Decree, which adopted the Referee's Report, held:

"The Referee found that the line in question was located on, and identical with, the 76.8 foot contour above sea level and based his finding, principally, upon the testimony of Edward W. DuRant, Sr., who was employed as a draftsman in 1948, and who prepared the plat attached to the deed. He testified that the line in question was traced directly from the Defendant's Land Maps 35 and 36 which were made by Harza Engineering Company and which were of record in the Clerk's Office in Clarendon County at the time of the giving of the deed from the Defendant to the Plaintiff and Mr. Davis." (Defense Exhibit 15).

The Bell court reached precisely the same conclusion as the lower court did in the case at bar, that the boundaries of the property conveyed by the Bell and Davis Deed are as set forth in the Taw Caw Plat.

Mr. Elliott, who provided testimony in the current matter, also testified in the Bell case. His earlier testimony has been introduced as evidence in the current matter. (Defense Exhibit 19). On cross-examination during the Bell case, Mr. Elliott stated that he doubted very seriously that the 75' contour as of 1949 was the same as at the time of the Bell trial (Defense Exhibit 19, pp. 40-41), thereby undermining his current argument that the contours he relied upon accurately reflected the 1949 boundary of the property.

The Plaintiff's reliance on this case as a basis for collateral estoppel is thoroughly misplaced; in fact, the ruling has the effect of precluding the Plaintiff from asserting his case, as it holds that the property line dividing the parcels is as shown on the very plat which conveyed the property *sub judice*. Darby has mis-applied this earlier ruling, which clearly serves to bar his current claim. Nothing in the earlier ruling indicates that the placement of the property boundaries were incorrect when they were established in the 1940s, and the ruling serves to support the lower court's ruling that the Taw Caw Plat (Defendant's Exhibit 7) is accurate.

Application of the ruling in the Bell case to the facts set forth herein, *i.e.*, that the property boundary is 100' inland from the Approximate Normal High Water Mark, reveals that

the boundaries coincide, and the Taw Caw Plat is accurate. (See Defense Exhibit 16 and 17).
There can be no other interpretation.

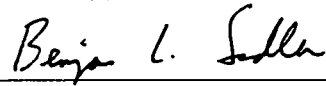
CONCLUSION

SCPSA respectfully requests that the Court of Appeals affirm the Final Order of the
lower court.

SOUTH CAROLINA PUBLIC
SERVICE AUTHORITY

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June 29 2011
Moncks Corner, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2011184586

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MAY 04 2011
SC Court of Appeals

Daniel Darby, ...Appellant,

vs.

South Carolina Public Service Authority, ...Respondent.

Designation of Matter
To Be Included in the Record of Appeal by
Appellant
Daniel Darby

The Appellant Daniel Darby proposes the following to be included in the Record on Appeal:

1. Complaint;
 2. Answer;
 3. Initial Order of Trial Court;
 4. Motion to Modify or Amend Judgment;
 5. Final Order of Trial Court;
 6. South Carolina Supreme Court Decision Bell vs. SCPSA;
 7. Transcript of August 4, 2010 Hearing;
- The following Plaintiff's Trial Exhibits;
8. PL 2 HARZA Plat;
 - 9.. PL 12 Letter to John Land from South Carolina Public Service Authority;
 10. PL 13 Edward DuRant Testimony from Bell vs. SCPSA ;
 11. PL 13a Lower Court Order Bell vs. SCPSA;
 12. PL 15 Arial photo of Point Property;
 13. PL 16 Pages 10 & 17 of US Fish and Wildlife Publication;
 14. PL 17 Quit Claim deed to Darby from mother, aunt and Uncles;
 15. PL 19 Deed from Davis Estate to Trustee;
 16. PL 20 Epinette's Oral Report;

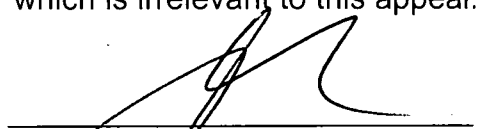
- 17. PL 21 Last Will and Testament of W. B. Davis;
- 18. PL 22 Last Will and Testament of Marjorie Davis;
- 19. PL 23 Two page map showing area leased US Fish & Wildlife;

The following Defense Trial Exhibits;

- 20. D 1 Deed from Robert Hepburn Davis to Darby;
- 21. D 2 Clarendon County Tax Map #72;
- 22. D 3 Duvalle Elliott Plat;
- 23. D 4 Deed from Clerk of Court to SCPSA for Nelson Property;
- 24. D 5 SCPSA map 35.5;
- 25. D 6 1949 Deed;
- 26. D 7 SCPSA Drawing 4200-A10;
- 27. D 8 Map 35;
- 28. D 8a Enlarged Map 35;
- 29. D 9 Partition Deed Bell to Davis;
- 30. D 10 Sykes Plat;
- 31. D 11 Deed of Distribution from Marjorie Davis Estate ;
- 32. D 12 Deed to Robert Hepburn Davis;
- 33. D 13 US Fish & Wildlife Lease;
- 34. D 14 C Map C-72-J;
- 35. D 15 Referee's Report Bell vs. SCPSA;
- 36. D 16a Aerial photograph of Point Property;
- 37. D 11b Overlay of aerial photograph;
- 38. D 11c Overlay of aerial photograph;
- 39. D 11d Overlay of aerial photograph;
- 40. D 11e Overlay of aerial photograph;
- 41. D 17 Composite aerial map showing relevant tracts;
- 42. D 18 Gordon McLeod Survey ;
- 43. D 19 Transcript of Duvalle Elliott Testimony from Bell vs. SCPSA .

I certify that this designation contains no matter which is irrelevant to this appeal.

May 3, 2011



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-14-354

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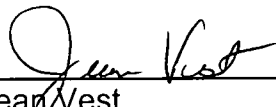
Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 3rd day of May, 2011, served the Designation of Matter To Be Included in the Record on Appeal by Appellant Daniel Darby in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

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May 3, 2011

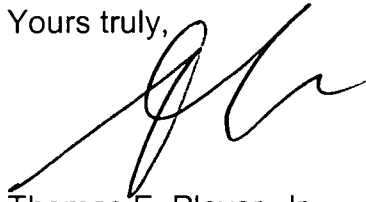
The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2011184586
P&M File No.: 2837

Dear Ms. Gee:

Regarding the above, please find a copy of the Appellant's initial Brief together with a copy of the Designation of Matter To Be Included In the Record on Appeal and proof of service in the form of a Certificate of Mailing.

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosures

cc: Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2011184586

Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

**INITIAL BRIEF ON BEHALF OF APPELLANT,
DANIEL DARBY**

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN FAILING TO FIND AND CONCLUDE THAT THE COMMON BOUNDARY LINE OF THE APPELLANT'S (DARBY) AND RESPONDENT'S (AUTHORITY) PROPERTIES IS A LINE LOCATED AT A DISTANCE OF ONE HUNDRED FEET INLAND OF THE 76.8 FOOT ELEVATION CONTOUR LINE, THE NORMAL HIGH WATER MARK OF THE LAKE MARION RESERVOIR, WHEN, IN PRIOR LITIGATION TO WHICH AUTHORITY WAS A PARTY, THE BOUNDARY DEFINED AS SUCH WAS THE FINAL JUDGMENT OF THE COURT?

II. DID THE TRIAL COURT ERR IN DECLARING THAT THE BOUNDARY IN QUESTION IS A LINE CONFORMING AS NEARLY AS POSSIBLE TO THE CONFIGURATION SHOWN ON A DRAWING ATTACHED TO THE DEED, RATHER THAN WHAT THE DRAWING PURPORTS TO DEPICT?

III. DID THE TRIAL COURT ERR IN FINDING AND CONCLUDING THAT THE BOUNDARY IN QUESTION IS A LINE CONFORMING AS NEARLY AS POSSIBLE TO THE CONFIGURATION THEREOF SHOWN ON A DRAWING ATTACHED TO THE DEED WHEN THE BOUNDARY SPECIFIED IS LOCATED BY REFERENCE TO THE NORMAL HIGH WATER MARK MENTIONED IN THE DEED DESCRIPTION?

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STATEMENT OF THE CASE

This is an appeal from an order declaring that the location of the boundary line in question be fixed by the best effort to duplicate on the ground a drawing attached to the deed from Authority to Darby's predecessor in title.

This action was commenced by the filing of a complaint on July 14, 2008.

(Complaint) The Complaint seeks a declaration of Darby's right of access over Authority's adjoining property and a declaration by the court of the location of the common boundary of the properties of Darby and Authority. (Complaint pp.2) Attached to the complaint and incorporated by reference was a copy of a survey plat (Elliott plat) prepared by Duvalle Elliott (Elliott) (Def's Ex. 3) which Darby contends accurately depicts the boundary location. The controversy arises from the difference in the location of the boundary as shown on the Elliott plat as compared to its depiction on the plat designated "South Carolina Public Service Authority Drawing 4200-A10" (4200-A10) (Def Ex. 7) referenced in a 1949 deed (1949 deed) (Def Ex. 6) conveying approximately Two Thousand One Hundred acres from Authority to Darby's predecessors in title. The difference in area is approximately 22 acres.

The Defendant answered with a general denial and, in addition, asserted defenses of Statute of Limitations, Issue Preclusion, Failure to Name the Real Party in Interest; Failure to Name a Necessary Party, Presumption of Title, and SC Code § 30-5-250 (a metes and bounds deed description may be created by referencing a recorded plat). The defendant asserted that the 1949 deed only conveyed 3.8 acres, part of Authority's tract 461. (Answer) The issue preclusion defense cited the case of Bell vs. South Carolina

Public Service Authority, 277 SC 556, 291 SE 2d 196 (1982) as the prior litigation relied upon as a bar to this action. (Answer pp 3)

By consent, the action was referred to the Honorable Thomas W. Cooper, Jr. as special referee. A non-jury hearing as to the boundary issue was held on August 4, 2010. By stipulation, the parties agreed that the access issue would be held in abeyance for further consideration by the Special Referee.

Numerous Exhibits were introduced at trial. Darby, Duvalle Elliott and a soil expert, Robert Epinette, testified at trial on behalf of Darby. Authority did not present any witnesses at the hearing but submitted a number of exhibits including the survey plat prepared by surveyor, Thomas Gordon McLeod, for the US Fish and Wildlife Service (USF&W). (Def Ex. 18)

Judge Cooper issued his order on October 14, 2010, rejecting the Plaintiff's claim that the location of boundary line was that shown on the Elliott survey. (Initial Order pp.8) The order did not provide specifics as to the location of the boundary line in question. Darby filed a motion to alter or amend the judgment pursuant to Rules § 52(b) and § 59(e) SCRCP (Motion to Alter or Amend)

On January 5, 2011, Judge Cooper issued its ruling on the Motion to Alter or Amend. The Order specified that the boundary line should be located by the best effort to duplicate the relevant portion of 4200-A10. (Final order pp.1)

The Notice of Intent to Appeal was served on February 2, 2011.

STATEMENT OF FACTS

The property in question was originally part of that acquired by Authority in connection with the construction of the impoundment of what is known as "Lake Marion" utilized in the production of hydroelectric power. In 1949, Authority conveyed a tract of land to Ralph Bell (Bell) and W. B. Davis, Jr., (Davis) Darby's grandfather. The deed description reads:

All those certain pieces, parcels are tracts of land, situate, lying and being in the Taw Caw Creek area of Clarendon County, South Carolina, near the Authority's Lake Marion Reservoir, measuring and containing in the aggregate Two Thousand One Hundred Forty-one and one-tenths (2141.1) acres, more less and being composed of portions of the authorities' tracts numbers SR-472, SR-484, SR-484-A, SR-456, SR-800, SR-456-A, SR-457, SR-457-A, SR-458, SR-461, SR-459, SR-460, SR-455, SR-455-A, 409A, SR-449, SR-450, SR-584, SR-424, SR-448, SR-474, and SR-470, located above the one hundred (100) foot strip of land shown on the map hereafter referred to as lying between the lands herein conveyed and the approximate normal high water line of the Authority's Lake Marion Reservoir, said tracts being more specifically shown and designated on a plat, prepared by the Engineering Department of the Authority, entitled "Map of Lands Taw

Caw Creek Peninsula”, which drawing is designated as Drawing No. 4200-A10 (Index A-1306) a print of which is attached hereto and made a part hereof. (Def Ex. 6 pp 1).

The plat referenced in the 1949 deed, 4200-A10, was prepared by Edward Durant, an employee of the Authority’s engineering department. (Pl Ex 13 pp 109-115) The property line is shown to be 100 feet inland of the normal high water mark line as called for in the deed. The line designating the “normal high water mark” is a tracing of the line designated as the 76.8 foot elevation contour line shown on the Authority’s acquisition map (Harza map) prepared by Harza Engineering. (Def Ex. 13 pg. 110-115, Def Ex. 13A pg 136-137) Neither the property line nor contour line was delineated by courses and distances on 4200-A10. (Rrial Tr. pp 93 L8-19)

In 1956 Davis and Bell partitioned the property. (Def Ex. 9) The deed incorporated by reference a sketch prepared by W. B. Sykes. (Def Ex. 10) The lines of this sketch, were taken from 4200-A10. The property allotted to Davis includes the property in question and appears on the sketch with a general configuration matching that of 4200-A10.

In 1974 Attorney John C. Land, III, corresponded with Authority on behalf of Davis regarding the location of the boundary line. By letter from the general manager of the Authority, Mr. Land was informed that it would be necessary to determine the contour line before a lease could be signed with the USFW. (Pl. Ex. 12)

In 1975 an action was commenced by Bell against Authority to resolve a dispute as to the boundary line of the property conveyed by the 1949 deed. This litigation involved the meaning and location of the “normal high water” mentioned in the 1949

deed and 4200-A10 from which the boundary could be located by measuring therefrom one hundred feet. Authority took the position that the normal high water mark corresponds to the 76.8 foot elevation contour line as shown on the Harza map and the tracing thereof shown on the Drawing 4200-A10. (Bell v SCPSA SCT Opinion)

At or about the trial of the Bell case, a survey plat of was prepared by Piedmont Aerial Surveys, Inc. bearing a date of photography of March, 1977. Reference to this survey does not appear in the Bell case. (Trial tr, pp 19 L25- pp 21 L7) This survey was commissioned by the Authority and the plats resulting from this survey are referred to as "C maps" by the Authority. The C maps show the 76.8 foot contour line, elevations at various points inland of that contour line and a line 100 foot inland from the 76.8 contour line. The line 100 feet inland of the 76.8 contour line is marked with survey monuments and shows the courses and distances, relative to the monuments. (Def Ex. 14) This line appears at a different location from what appears on the 4200-A10. This marked line is the basis for the Elliott survey.(Trial Tr pp 79 L77-80 L12) It is Darby's position that this is the correct property line

In 1979, judgment of the trial court in the Bell case was issued. (Pl Ex. 13A, 142-144), (Def Ex. 15, p139) It was the judgment of the court that the boundary line of the property conveyed by the 1949 deed was a line 100 feet inland of the normal high water mark and that the normal high watermark was a line corresponding to the 76.8 foot elevation contour. The judgment was sustained on appeal. (Bell Case SCT decision)

Davis died and pursuant to the terms of his will, by deed dated February, 1983, the property was deeded to William Bell Davis, as Trustee. The subject property is listed as number 3 of a number of tracts. The deed describes it as a four acre tract designated as

Parcel R-5-11 on the Clarendon County Tax Map, bounded on the North by Nelson and on all other sides by Authority. (Pl Ex. 19 pp. 2)

In 1999 Marjorie Bell Davis, the widow of Davis died. A deed of distribution from her estate to her children includes, as tract 8, the subject property referred to therein as 4 acres, "Point Property", TMS # 072-00-00-002-00. (Def Ex. 11 pp 3) This tax map shows the parcel property as a four acre tract with a configuration similar to that shown on the Sykes map and Drawing 4200-A10. (Def Ex. 2)

In 2002 Robert Hepburn Davis, son of Davis and Marjorie Bell Davis, acquired a deed from his brothers and sisters. This deed describes the property by reference to the tax map parcel (Def Ex. 12).

For Twelve Thousand Dollars Darby acquired a deed from his uncle, Robert Hepburn Davis, dated June 29, 2007. This deed describes the property as four acres and references the same tax map parcel number. (Def Ex. 1)

Darby hired Elliott to survey the property. In connection with the preparation of the survey, he and Elliott visited Authority's engineering department. (Trial Tr pp 83 L 14-pp87 L 5) Elliott prepared his plat which conforms to the C map.

After the commencement of this litigation, a quitclaim deed to Darby was signed by the devisees of Davis, and William B. Davis as Trustee. This deed describes the property by reference to the Elliott plat. (Pl Ex. 17)

When Darby was unable to acquire a quitclaim deed from Authority, this litigation was commenced to have the boundary determined by judicial decree. (Trial Tr. pp53 L 11-16)

ARGUMENT

I BY COLLATERAL ESTOPPEL AUTHORITY IS BOUND BY THE LOCATION OF THE BOUNDARY LINE AT A DISTANCE OF 100 FEET FROM THE 76.8 FOOT ELEVATION CONTOUR LINE.

As alleged in the answer to the complaint, the issue of the boundary line location of the property conveyed by the 1949 deed was litigated in the Bell case. In that case, Authority contended and the trial and appellate courts agreed that the boundary line was 100 feet inland of the high water mark which was further defined as the 76.8 foot elevation contour line. The following is an excerpt from the referee's report in that case:

I find as to ISSUE NO. 1 that the dividing line between the property of the Plaintiff and the Defendant are along Lake Marion referred to in Plaintiff's Exhibit 1 and delineated as a heavy line on Plaintiff's Exhibit 2 to be 100 feet above an elevation of 76.8 feet above sea level.(Def Ex. 15 pg 139)

While true that the subject property was not owned by Bell when that litigation took place, the property description, including 4200-A10, construed by that litigation, applied to all of the property conveyed by the 1949 deed.

Collateral estoppel, also known as issue preclusion, prevents a party from re-litigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Carolina Renewal, Inc. v. South Carolina Dept. of Transp. 385 S.C. 550, 554, 684 S.E.2d 779, 782 (S.C.App., 2009) It is the issue as opposed to the claim which is important. The answer of authority alleges that

the issues involved in this litigation were in fact litigated in that former action. (Answer pp 3)

There was no indication in the Bell Case that the acreage calculation or the configuration of the property as drawn on 4200-A10, as opposed to the actual high water mark, was the basis for locating the boundaries.

II THE BOUNDARY LINE IN QUESTION SHOULD BE LOCATED BY REFERENCE TO THE ACTUAL HIGH WATER MARK RATHER THAN AN INACCURATE GRAPHIC REPRESENTATION THEREOF

The trial court orders the location of the boundary by replicating, on the ground, the graphic representation thereof shown on 4200-A10 without regard to what that representation purports to depict. (Final Order)

The purpose of the legal description in a deed, including any plat referenced in the description, is to identify the property conveyed. The 4200-A10 shows the property bounded on all sides, other than the boundary of the Nelson property, by the One Hundred foot strip lying immediately above the 76.8 foot elevation contour line. (Def Ex.7) The trial court order disregards the reference to the high water mark in favor of the image drawn on the plat. The evidence does not support a finding that the parties to the 1949 deed intended such a drastic departure from the idea that the drawing is intended to reflect something on the ground as opposed to locating, on the ground, a line with no reference other than the lines on the paper.

This case represents the classic case where the Rules of Relative Weight of Conflicting Elements for locating boundaries (Rules of Relative Weight) are to be applied to ascertain the location of the line on the ground. "In locating land, resort is had first to natural boundaries, next to artificial monuments, then to adjacent boundaries, and last to

courses and distances. It is the actual boundary and not the representation of it on the plat that must control. Acreage occupies the lowest of the priorities.” Garrett v. Locke 309 S.C. 94, 98-99, 419 S.E.2d 842, 845 (S.C.App., 1992)

III THE BOUNDARY SHOULD BE LOCATED BY REFERENCE TO THE NORMAL HIGH WATER MARK MENTIONED IN THE DEED DESCRIPTION

“The relative weight to be given to evidence of location is a matter of law, and they rank in this order: (1) natural boundaries; (2) artificial marks, and (3) course and distance.” Southern Realty and Investment Co. v. Keenan, 99 S.C. 200, 83 S.E. 39, 41-42 (1914). Kirkland v. Gross 286 S.C. 193, 197, 332 S.E.2d 546, 548 (S.C.App.,1985)

The trial court correctly states that the Rules of Relative Weight are not inflexible (Initial Trial order); however, they are rules and if “inflexible” means they may be ignored without sufficient reason they would not be rules at all. (Initial trial Order) True, in this case, the result is that Mr. Darby owns significantly more property than he thought was being conveyed to him, but that fact, does not warrant abandonment of the rules anymore than allowing the fact that, if the trial court order stands, Authority retains an equal amount of high ground when the 1949 deed description indicated it intended to convey its property beyond 100 feet of the normal high water mark. It seems that one of the purposes of the rules is to resolve this very conflict by their application as opposed to giving the most weight to that element which results in the smallest change, if any, in the quantity stated.

Deviation from the rule, so as to have quantity control over natural monuments, would seemingly require evidence over and above a statement of acreage in the deed. Here, we have at most a notation on 4200-A10 (Def. Ex. 7) as to quantity. It appears that this notation is intended to reflect the estimated acreage of Authority's tract 461 located above the one hundred foot strip above the high water mark. The overlays of the various plats and drawing show that portions of tracts other than 461 are above the property line as it is drawn on 4200-A10, including tract 460. (Def Ex. 16E) The acreage calculation shown on 4200-A10 shows that 17.2 acres of tract 460 are included in the calculation. (Def Ex. 7) The only evidence (or lack thereof) as to the significance of the 3.8 acre notation is the testimony from the Bell case that 4200-A10 was prepared by Mr. DuRant by tracing relevant portions of the Harza Map.(Def Ex. 13 pp 110-115, Def Ex. 13A pp 136-137) It follows that the quantity was most likely estimated by reference to the graphic as it appeared on the tracing for the purpose of inclusion in the tabulation of acreage shown in 2400-A10, since there is no evidence that it appears any place else.(Def Exh 7) There is no contention and certainly no evidence that 4200-A10 was drawn so as to accommodate a specific quantity of land. Nor is there any evidence to suggest that the boundary location should be dependent upon the quantity as opposed to the quantity dependent upon the location of the specified boundary.

The proceedings in the Bell case do not suggest that the quantity of land conveyed was a factor in establishing the boundary. The reasonable inference is the opposite. The acreage was most likely estimated with reference to where the boundary line appeared on the drawing. It should be remembered that the 1949 conveyance was in excess of Two Thousand One Hundred Acres. (Def Ex. 6) The variation in acreage noted on 4200-A10

and that resulting from the C- Maps, and the Elliott and McLeod surveys is less than 2% of the total acreage conveyed.

The trial court order suggests that the decision was influenced by the difference in acreage which would result from the location of the boundary if located in relation to the high water mark and what Darby thought he was acquiring, four acres. (Final Trial Court Order) The fact that he thought he was acquiring less acreage, could not be reflective of the intent of the parties to the 1949 deed and should not have any bearing upon the Application of the Rules of Relative Weight. The case of Nelson v Frierson touches on this issue:

The decision of this case must depend upon the application of a well established rule of surveying that the lines must always be extended to the bounds called for where no evidence of a higher nature intervenes to control them. This rule, to be sure, sometimes leads to consequences which are apparently extravagant and unreasonable. But its great value is in its certainty, because in certainty, we find security. The motion therefore must be discharged.

Nelson v. Frierson 12 S.C.L. (1 McCord) 232. (1821)

The case of Fullwood v Graham 30 S.C.L. (1 Rich.) 491, (1845) points to the insignificance of the variance in quantity as a result of the application of the Rules and the requirement that they be utilized in the absence of some compelling reason to deviate:

From the facts stated in the reports, it is as plain as any thing can be made by description, that the plaintiff's grant covers the portions now in dispute of the immense territory on which it is located.

It is no objection that the quantity is more than four times the amount stated in the grant, or that the lines are prolonged greatly beyond the distances. So, too, it is no objection that course is sometimes disregarded. It is never so done, unless some countervailing matter compels it to yield.

The defendant's counsel is wrong in supposing that there is any difference in the rules of location, as laid down and enforced in the older or more recent cases.

They all maintain that in locating lands, we are to resort, 1st. To natural boundaries, 2d. To artificial marks, 3d. To adjacent boundaries, 4th. To course and distance; but it has never been said, that each of these occupied an inflexible position. It sometimes might occur that an inferior means of location might control a higher; when it was plain there was a mistake. As where a tract of land is represented as lying on one great stream, and the artificial marks or other circumstances shew that it lies upon another. All that is meant is, that the evidences of location which I have

mentioned, are resorted to in their order, unless it appears that the representation in the plat depending upon them, is a mistake. In that event, the mistake is to be corrected. The cases referred to by the defendants' counsel are decidedly against his inference. Take, for example, *Bradford vs. Pitts*, 2 Con. Rep. by Mill, 115. It maintains, what I have admitted always, that when a stream is laid down as running through a tract of land, and artificial marks show that the surveyor laid it down erroneously, the artificial marks are to be followed, and the precise location of the stream disregarded.

Fulwood v. Graham 30 S.C.L. (1 Rich.) 491, (1845)

The trial court cites the case of Smith v. DuRant 236 S.C. 80, 92-93, 113 S.E.2d 349, 356 (S.C.1960) for the position that the Rules of Relative weight are not inflexible and must give way to the intent of the parties.(Initial Trial Order) No doubt the Rules are not inflexible and, of course, the intent of the parties trumps the rules. In the case cited, the evidence, by way of testimony of the grantor and others, and other extrinsic evidence, indicated that the parties intended that the conveyance include only the lots with the dimensions shown on the plat, not all property between the grantor and the adjoining property owner. It was obvious that the surveyor had made a mistake by noting the adjoining property owner rather than other property of the grantor as the property adjoining that conveyed. Had the Rules of Relative Weight been strictly applied, the designation of the adjoining property owner would have taken priority over the courses

and distances of the lots as designated on the plat, but the evidence overwhelmingly indicated that the parties intended to convey only the property with the dimensions shown on the plat.

Logic suggests that the existence of a conflict between the competing elements alone cannot provide a basis for disregarding the rules since such a conflict is the reason we have the rules. Deviation from the rules under those circumstances would mean the absence thereof. As stated in Klapman v. Hook 206 S.C.51, 32 S.E.2d 882, (S.C. 1945): “The vital question is the intent of the grantor at the time the deed is executed. But the rules for locating boundaries heretofore adverted to represent those methods of reasoning which experience has taught are best calculated to effectuate such intention. In this case, no good reason appears why we should not follow these general rules”.

The trial court order mentions the testimony of Darby that he thought he was only acquiring four acres and the deeds in his chain of title describing the property as four acres with reference to the tax map as indication of the intent of the parties as to what was conveyed by the 1949 deed. (Final Trial Court Order). How this is evidence of the intent of the parties to the 1949 deed is unclear. Darby had not been born at that time. (Trial Tr pp 68 L15-18) It is obvious that the tax map simply perpetuated the unknown error of 4200-A10.

It would seem that the evidence necessary to warrant deviation from the Rules of Relative Weight as well as the rule as to the control of the actual boundary as opposed to its erroneous depiction on a plat would, at a minimum, necessarily consist of more than that which gives rise to the need for their application.

The only evidence of circumstances surrounding of the 1949 deed is the testimony of Mr. DuRant as to the tracing of the Harza Map. (Pl Exh13 Durant testimony pp109-115). There is no evidence of intent which would justify disregarding the rules.

Notwithstanding the actual boundary specified, a different location may result from acquiescence. Though this theory has not been advanced by Authority, nor mentioned by name in the trial court order, the order suggests that it was influenced by the apparently long-held notion that the property in question conformed generally as to and quantity and configuration to that shown on the 4200-A10.(Trial Ct. Order) Regardless of whether and to what degree that assumption may have existed, the elements for establishment of a boundary by acquiescence are not present in this case, since there is no evidence that either party ever recognized a boundary located on the ground consistent with the drawing of 4200-A10. In fact, the evidence which might be relevant on a theory of acquiescence, would point to Authority's recognition of the C-maps as the boundary.

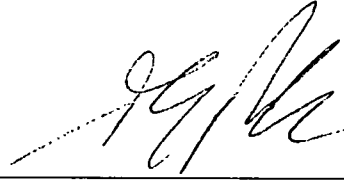
Darby testified that the Authority considered the line shown on the C maps to be the boundary. (Trial Tr pp52 L1-pp 53 L14) The C maps are monumented by Authority's monuments. (Trial Tr pp 19 L 25- pp 21-L7). The Authority's property was leased to USF&W. The Signs designating the USF&W boundary are located along the boundary shown on the C maps.(Pl Ex 11), (Trial Tr. pp L18-pp56 L17) In the USF&W publication, the area leased appears to conform to that shown on the C map rather than the drawing 4200- A10.(Pl Ex 16 pp 10and 17) For a new boundary to be established by acquiescence, both parties must recognize that a particular line constituted the true property line. See Croft v Sanders. 283 S.C. 507, 510, 323 S.E.2d. 791, 793 (Ct. App.

1984) While there is evidence that Authority recognized the boundary shown on the C maps as the property line, Darby concedes that no evidence was presented that he or his predecessors recognized it as such prior to 2007.

CONCLUSION

For the foregoing reasons Darby requests that this court reverse the trial order and direct the entry of judgment declaring the boundary line to be located with reference to the 76.8 foot contour line reflected on the C map and confirmed by the Elliott and McLeod plats.

May 3, 2011

A handwritten signature in black ink, appearing to read 'T. Player, Jr.', is positioned above a horizontal line.

Thomas E. Player, Jr.
PLAYER & MCMILLAN, LLC
305 North Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

ATTORNEY FOR THE APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-14-354

Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 3rd day of May, 2011, served the ***Initial Brief on Behalf of the Appellant, Daniel Darby*** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to its attorney of record:

Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire, Santee Cooper
Post Office Box 2946101
Moncks Corner, South Carolina 29461-6101.
Attorneys for Respondent

RECEIVED
MAY 04 2011
SC Court of Appeals

Sumter, South Carolina



Jean Vest
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The South Carolina Court of Appeals

Daniel Darby,

Appellant,

v.

South Carolina Public Service
Authority,

Respondent.

The Honorable Thomas W. Cooper, Jr.
Clarendon County
Trial Court Case No. 2008-CP-14-00354

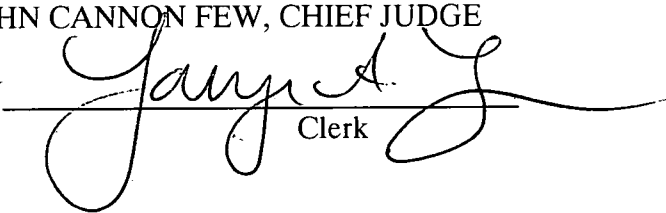
ORDER

Pursuant to a telephone conference with the parties, the Appellant's Initial Brief and Designation of Matter are due on May 3, 2011. The Respondent's Initial Brief and Designation of Matter are due June 30, 2011, and the Appellant's Initial Reply Brief is due twenty days thereafter.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE

BY


Clerk

Columbia, South Carolina

cc: Thomas E. Player, Jr, Esquire
Elizabeth Warner, Esquire
Ben Sadler, Esquire

4/5/11
FILED



The South Carolina Court of Appeals

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March 23, 2011

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Elizabeth Warner, Esquire
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Santée Cooper
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Moncks Corner, SC 29461

Re: Darby, Daniel v. SC Public Service Auth
Case Tracking #: 2011184586

Dear Counsel:

All parties are advised that the telephone conference, originally scheduled for April 1, 2011, is rescheduled for April 4, 2011, at 9:30am.

This letter is to confirm that the Court granted an extension to the Appellant allowing the Appellant's Initial Brief and Designation of Matter to be served and filed on or before April 13, 2011.

All parties are advised that any additional extension requests must be presented to the Court as a formal motion and must be in compliance with Rule 240 of the South Carolina Appellate Court Rules.

Very truly yours,

CLERK

TAG/ec



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

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March 14, 2011

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Re: Darby, Daniel v. SC Public Service Authority
Case #2011184586

Dear Counsel:

This letter serves as an Order granting Appellant's request for an extension of time in which to file the Appellant's Initial Brief and Designation of Matter. I have extended the due date until April 13, 2011. I realize that this extension may not give you all the time you need to complete the Appellant's Initial Brief and Designation of Matter. I have set a conference call for 9:30 a.m. on Friday, April 1, 2011 to discuss an overall approach to setting due dates for all filings in this appeal. **The Appellant is responsible for initiating the conference call by getting all parties on the phone at the allotted time.** The call should last less than ten minutes. The participants in the call will include counsel for all parties and me. In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734-1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you on Friday, April 1, 2011.

Sincerely yours,

John Cannon Few, by Janyce A. Gr
John Cannon Few
clerk

JCF/jt

FILED

3/15/11

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2008-CP-14-0354

RECEIVED

MAR 08 2011

Daniel Darby., ... vs. SC Court of Appeals
South Carolina Public Service Authority, ... Respondent.

MOTION FOR EXTENSION OF TIME

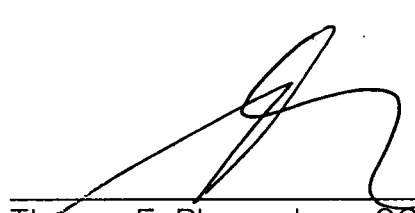
YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 208, 209, and 240 of the South Carolina Appellate Court Rules, Appellant hereby moves for a thirty (30) day extension to file it's Initial Brief and Designation of the Matter to be included in the Record on Appeal. The Brief is currently due on March 14, 2011.

Counsel for Appellant has conferred with the Counsel for Respondent, and Respondent has no objection to Appellant's request for additional time. This is Appellant's first request.

March 7, 2011

Other Counsel of Record:

Ms. Elizabeth H. Warner, Esquire
Mr. Benjamin L. Sadler, III, Esquire
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461
Telephone: (843) 761-7075
Facsimile: (843) 761-4010
Attorneys for Respondent


Thomas E. Player, Jr. SC Bar # 4478
Player & McMillan, LLC
305 North Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email address: tomplayer@sc.rr.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

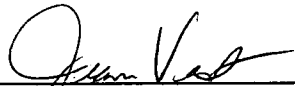
Thomas W. Cooper, Jr., Special Referee

Case No. 2008-CP-14-0354

Daniel Darby.....Appellant,
vs.
South Carolina Public Service Authority,.....Respondent.

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 7th day of March, 2011, served the ***Motion for Extension of Time*** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to it's attorneys of record, Ms. Elizabeth H. Warner and Mr. Benjamin L. Sadler, III, Santee Cooper, One Riverwood Drive, Moncks Corner, South Carolina 29461.



Jean West
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Sumter, South Carolina

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

March 7, 2011

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

17618 25
RECEIVED
MAR 08 2011

SC Court of Appeals

RE: *Daniel Darby vs. South Carolina Public Service Authority*
Case No.: 2008-CP-14-0354
P&M File No.: 2837

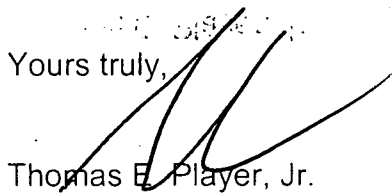
Dear Mr. Richstad:

Please find enclosed the original and six (6) copies of Appellant's Motion for Extension of Time to file it's Initial Brief and Designation of Matter to be included in the Record on Appeal, along with the original Proof of Service in the above referenced action.

Also enclosed is my firm's check in the amount of \$25 representing the filing fee for this Motion. Please return a clocked copy to me in the envelope provided.

By copy of this letter, I am serving same on counsel of record for the Respondent.

Yours truly,


Thomas E. Player, Jr.

TEP/jr/v
Enclosures

cc: Ms. Elizabeth H. Warner, Esquire
Mr. Benjamin L. Sadler, III, Esquire

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

February 10, 2011

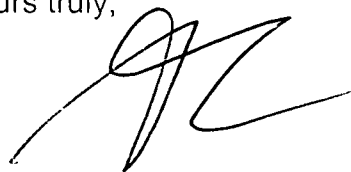
The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2011184586

Dear Mr. Richstad:

This is to advise that the transcript of record was delivered to me on February 10, 2011.

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv

cc: Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire
Ms. Rosalyn W. Frierson, Director
South Carolina Court Administration

RECEIVED

FEB 11 2011

SC Court of Appeals

03/14/11 18
04/13/11



Benjamin Sadler
Attorney II
Office of General Counsel

One Riverwood Drive
Moncks Corner, SC 29461-2901
(843) 761-7075
Fax: (843) 761-4010
P.O. Box 2946101
Moncks Corner, SC 29461-6101

February 4, 2011

Mr. Bruce H. Peggs, CVR-CM
536 Benton Court
Sumter, SC 29150-3922

Re: Daniel Darby v. South Carolina Public Service Authority
Civil Action No.: 2008-CP-14-354

Dear Mr. Peggs:

This is to request a copy of the transcript of record for the hearing in the above-referenced matter, which came to be heard on August 4th, 2010. Please send us an invoice to include your taxpayer identification number for payment.

Sincerely,

A handwritten signature in cursive script that reads 'Ben Sadler'.

Benjamin L. Sadler, III

BLS/pc

cc: Thomas E. Player, Jr., Esquire
SC Office of Court Administration
✓ SC Court of Appeals

RECEIVED
FEB 07 2011
SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

DANIEL DARBY)

Plaintiff,)

vs.)

SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

DOCKET NUMBER: 2008-CP-14-354

CERTIFICATE OF MAILING

This is to certify that a copy of Request for Transcripts of Record in the foregoing matter was deposited in the United States mail, with first class postage affixed thereto, addressed to the following:

Mr. Bruce H. Peggs, CVR-CM
536 Benton Court
Sumter, South Carolina 29150

Thomas E. Player, Jr., Esquire
Player and McMillan, L.L.C.
305 North Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151

Ms. Rosalyn W. Frierson
Office of the Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

The Honorable Kenneth A. Richstad
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 07 2011
SC COURT OF APPEALS

Prestine Clarke

Prestine Clarke, Paralegal

February 4, 2011



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 8, 2011

Thomas E. Player, Jr, Esquire
Player & McMillan, LLC
P.O. Drawer 3690
Sumter, SC 29151

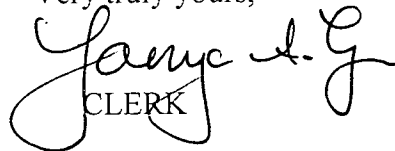
Re: Darby, Daniel v. SC Public Service Auth
Case #2011184586

Dear Mr. Player:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,


CLERK

TAG/jt

cc: Elizabeth Warner, Esquire
Ben Sadler, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 8, 2011

Thomas E. Player, Jr, Esquire
Player & McMillan, LLC
P.O. Drawer 3690
Sumter, SC 29151

Re: Darby, Daniel v. SC Public Service Auth
Case #2011184586

Dear Mr. Player:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

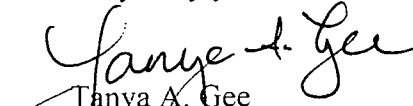
We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed with the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,


Tanya A. Gee
CLERK

TAG/jt

cc: Elizabeth Warner, Esquire
Ben Sadler, Esquire

The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and
Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court:²

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.
2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.
3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina

August 13, 2007

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(l), SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.

pm - 2-2-11
pos - 2-2-11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2008-CP-14-0354

 Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

NOTICE OF APPEAL

Daniel Darby appeals the orders of the Honorable Thomas W. Cooper, Jr. dated October 14, 2010, and January 5, 2011. Appellant received written notice of entry of the earlier order on October 18, 2010, and timely filed a motion for reconsideration and amendment of the order. The latter order is a ruling upon that motion, notice of entry of which was received on January 7, 2011.

February 2, 2011

Other Counsel of Record:
Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461
Attorneys for Respondent


Thomas E. Player, Jr.
Player & McMillan, LLC
305 North Main Street
Post Office Box 3690
Sumter, South Carolina 29151-3690
Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email address: tomplayer@sc.rr.com
Attorney for Appellant

RECEIVED

FEB 04 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

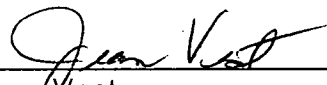
Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-14-354

Daniel Darby, ...Appellant,
vs.
South Carolina Public Service Authority, ...Respondent.

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 2nd day of February, 2011, served the **Notice of Appeal** in the above captioned matter, on South Carolina Public Service Authority by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to it's attorney of record, Ms. Elizabeth Warner, Esquire and Mr. Ben Sadler, Esquire, Santee Cooper, Post Office Box 2946101, Moncks Corner, South Carolina 29461-6101.



Jean Vest
Legal Assistant to Thomas E. Player, Jr.
Player & McMillan, LLC
305 N. Main Street
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306

Sumter, South Carolina

RECEIVED

FEB 04 2011

SC Court of Appeals

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

February 2, 2011

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Daniel Darby, Appellant, vs. South Carolina Public Service Authority,*
Respondent
Case No.: 2008-CP-14-354
P&M File No.: 2837

Dear Mr. Richstad:

Enclosed for filing is a Notice of Appeal in the above referenced matter. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondent
2. A copy of the Orders which are to be challenged on Appeal
3. A filing fee of \$100.00

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosures

cc: Ms. Elizabeth Warner, Esquire
Mr. Ben Sadler, Esquire

RECEIVED
FEB 04 2011
SC Court of Appeals

PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

305 NORTH MAIN STREET
POST OFFICE DRAWER 3690
SUMTER, SOUTH CAROLINA 29151

Thomas E. Player, Jr.
Marvin E. McMillan, Jr.

February 2, 2011

Telephone: (803) 775-2306
Facsimile: (803) 436-5960
email:
tomplayer@sc.rr.com
chipmcmillan@sc.rr.com

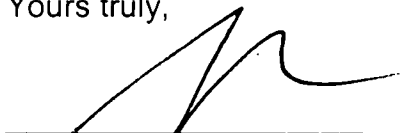
The Honorable Beulah Roberts
Clerk of Court for Clarendon County
Post Office Box 136
Manning, South Carolina 29102

RE: *Daniel Darby vs. South Carolina Public Service Authority*
Civil Action No.: 2008-CP-14-354

Dear Ms. Roberts:

Enclosed for filing is a notice of appeal in the above case.

Yours truly,



Thomas E. Player, Jr.
Player & McMillan, LLC
Post Office Drawer 3690
Sumter, South Carolina 29151-3690
(803) 775-2306
Attorney for Appellant

TEP, Jr./jv

cc: Ms. Elizabeth Warner
Mr. Ben Sadler
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461
Attorneys for Respondent

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
DOCKET NUMBER: 2008 -CP-14-354

COUNTY OF CLARENDON)

Daniel Darby,)

Plaintiff,)

vs.)

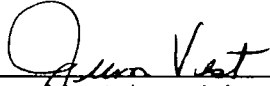
South Carolina Public Service
Authority,)

Defendant.)

CERTIFICATE OF MAILING

This is to certify that a copy of Notice of Appeal in the foregoing matter was deposited in the United States mail, with first class postage affixed thereto, addressed to the following attorneys of record:

Ms. Elizabeth H. Warner, Esquire
Mr. Ben Sadler, Esquire
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461



Jean Vest, Legal Assistant

February 2, 2011

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-14-354__

DANIEL DARBY,

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

DATE 1/5/2011

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐

JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐

See attached order. (Formal order to follow)

☒

Statement of Judgment by the Court: The Plaintiff, in

his well-researched and articulate memoranda, asks this Court to abandon what it determines the intent of the parties to be, i.e., what did each grantor in the chain of title think it was conveying, and what did each grantee in the chain, including the plaintiff, think it was receiving (in this case 3.8 acres or 4 acres, more or less as depicted on a recorded plat # 4200-A10), in favor of a boundary line 100 feet inland from "the approximate high water mark of the Authority's Lake Marion reservoir." That boundary line is depicted, according to the plaintiff on an unrecorded "C" map obtained by the defendant in 1979, 30 years after the original conveyance from the defendant to the plaintiff's predecessor in title. I am not willing to do so for reasons stated in my original order. MOREOVER, if the parties and facts were reversed so that IF the defendant had conveyed 27 acres (the amount now claimed by the plaintiff) to the plaintiff's predecessor in title in 1949, and now sought to decrease that acreage to 3.8 acres (under the theory advanced by the the plaintiff here), thereby depriving the plaintiff of what he thought he had obtained, I would not allow that acreage to be decreased for the same reason. This rationale is not based on the "whim of the fact finder", but on the clear and unmistakable statement of a conveyance of 3.8 acres or 4 acres, more or less, in each conveyance in the chain of title. I do agree that the property line should now be established on the ground by the best attempt at duplicating the lines shown on Drawing 4200-A10. Otherwise the plaintiff's Motion to Reconsider is DENIED.

Dated at Manning, South Carolina, this 5th day of January, 2011.

SCCA SCRPC Form 4 Revised 06/2008

Signature
#11

RECEIVED

FEB 04 2011

SC Court of Appeals

S/Thomas W. Cooper Jr.
PRESIDING JUDGE

This judgment was entered on the day of January 2011, and a copy mailed first class this
day of January, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Thomas E. Player, Jr., Esq.
ATTORNEY(S) FOR PLAINTIFF

Elizabeth Henry Warner, Esq.
ATTORNEY(S) FOR DEFENDANT

Beulah B. Roberts
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

DANIEL DARBY,

Plaintiff,

vs.

SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

DOCKET NUMBER: 2008-CP-14-354

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 10/14/10

Beverly S. Roberts

CLERK OF COURT

CLARENDON COUNTY, SC

FINAL ORDER

Pursuant to a Consent Order of Reference dated May 18, 2010, this matter was referred to me as Special Referee, to take testimony, to determine findings of fact and conclusions of law, and to render final judgment pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure.

This matter was heard in Manning, South Carolina, on August 4, 2010. The sole issue in controversy is the extent of a parcel of real property conveyed by Defendant to the Plaintiff's predecessor in title in 1949.

As a preliminary matter, I find that the parties and subject matter are properly before the Court and that the real property in controversy is situated in Clarendon County, South Carolina. Having heard testimony and examined the evidence offered by the parties, and having heard the arguments of counsel and reviewed the pre-trial briefs, I now make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The Complaint in this action, entitled "Non-Jury Declaratory Judgment Regarding Real Estate" was filed on July 14, 2008¹. The only cause of action before this court sought the

¹ The Complaint alleged a second cause of action which related to access. The Parties hope to resolve this issue by

confirmation of the location of an alleged boundary line as shown on a plat prepared by Duvalle W. Elliott entitled "Plat of A Tract of Land Containing Twenty Six and 64/100 (26.64) Acres of Land. Survey Completed September 07, 2007" for Daniel M. Darby and Robin Christina A. Darby" ("Elliott Plat")².

The Plaintiff in this action is a resident of Clarendon County and the real property which is the subject of this action is located in Clarendon County. The Defendant, South Carolina Public Service Authority, also known as Santee Cooper ("Santee Cooper"), is an agency of the State of South Carolina.

The property *sub judice* was deeded by Robert Hepburn Davis to Daniel M. Darby and Robin Christina Darby by deed dated June 29th, 2007, by instrument recorded in the Office of the Register of Deeds for Clarendon County in Book 665 at Page 222. The legal description states the property is comprised of 4.0 acres, more or less, and is more particularly shown and delineated as Tax Map Parcel No. 072-00-00-002. The relevant Tax Map depicts the parcel referenced in the deed (TMS 072-00-00-002) as containing 4 acres, and also designates the additional property Plaintiff claims as "FWS" (commonly known as Fish and Wildlife Service) but does not provide a tax map number for this additional property in question.³ The real property records for Clarendon County designate Tax Parcel No. 072-00-00-002 as being comprised of 4.0 acres. The Elliott Plat, upon which Plaintiff relies, did not exist at the time of the conveyance to the Plaintiff.

agreement and have agreed to bifurcate the proceedings, with the court reserving jurisdiction to consider, at a later date, the Second Cause of Action should it become necessary.

2 The Elliott Plat was recorded at the direction of the Plaintiff on January 14, 2010, during the pendency of this litigation, in Plat Book 1099 at Page 3 in the Office of the Register of Deeds for Clarendon County. Plaintiff had prepared, also during the pendency of this litigation, a Quit Claim Deed from Plaintiff's direct predecessors in title which purports to convey to the Plaintiff the 26.64 acres referenced in the Elliott Plat. The Deed, while executed, is undated, does not contain the recorded plat reference for the Elliott Plat, and is unrecorded.

3 Defendant introduced into evidence a 1941 lease from Santee Cooper to the United States Fish and Wildlife Service which purported to include the property in question. It is common practice for lands owned by Santee Cooper to not have an assigned tax map number since there is a lack of taxation of state owned parcels.

The original conveyance from Santee Cooper to the Plaintiff's predecessors-in-title, along with every subsequent conveyance, recites acreage of either $3.8 \pm$ or 4.0 acres. Additionally, Daniel M. Darby, the Plaintiff in this action, candidly admitted during testimony at trial that he thought he was buying a 4 acre tract of land from his grantor, his uncle.

The deed from Santee Cooper to the Plaintiff's predecessors-in-title ("the Davis and Bell Deed"), dated November 18, 1949 and recorded in Book C-14 at page 21 in the Office of the Register of Deeds for Clarendon County, contains the following recitation regarding the location of the property:

"tracts nos....SR-461....located above the one hundred (100) foot strip of land shown on the map hereafter referred to as lying between the lands herein conveyed and the approximate normal high waterline of the Authority's Lake Marion Reservoir, said tracts being more specifically shown and designated on a plat prepared by the Engineering Department of the Authority, entitled "Map of Lands of Taw Caw Creek Peninsula", which plat is designated as Drawing No. 4200-A10 (Index A-1306) a print of which is attached hereto and made a part hereof."

Drawing No. 4200-A10 referenced in the above deed is a plat prepared by Santee Cooper and dated September 27, 1949. It is attached hereto and incorporated by reference. The plat conveys multiple parcels totaling 2,141.1 acres, and identifies separate parcels with their respective acreage. Most significantly, the Plaintiff's parcel is shown thereon as SR-461 and is denoted to contain " $3.8 \pm$ Ac.". Further, the tabulation table located on the face of the plat states that SR-461 is comprised of $3.8 \pm$ acres. Drawing No. 4200-A10 also shows the location of the "Approximate Normal High Water" line.

Evidence presented in an earlier action brought by the Plaintiff's predecessor-in-title (See Bell v. South Carolina Public Service Authority, 277 S.C. 556, 291 S.E.2d 196 (1982)) reveals that Drawing No. 4200-A10 represents a tracing from a plat prepared by the original engineering firm

At

retained by Santee Cooper to design the two reservoirs. These Harza Plats, so-named because they were prepared by the Harza Engineering Company, were introduced into evidence in both the earlier trial and the current action. The Elliott Plat attempts to locate the one hundred (100) foot strip in a different location than that shown on the Harza Plat, Drawing No. 4200-A10, and a later division plat between Plaintiff's predecessors, Mr. Bell and Mr. Davis. The division deed from Mr. Bell to Mr. Davis, the Plaintiff's Grandfather, refers to this property as being inside a 100 foot strip reserved by Santee Cooper. The Bell case indicates that the 100 foot strip is bounded by the 76.8 foot elevation.

The Plaintiff takes the position that the 100 foot line inland of the normal high water line is incorrectly drawn on the plat referenced in the Bell and Davis Deed, and, if correctly drawn, the 100 foot strip inland of the normal high water line would actually have conveyed some 27 acres, rather than 4 acres. The Plaintiff argues that since the high water mark is a natural boundary, that boundary controls in any dispute over a bare statement of acreage. The Plaintiff also places reliance on a series of maps prepared by Santee Cooper which purport to establish certain boundary lines, but have never been used for conveyance purposes and have never been made a part of the public record. These maps, referenced as "C" maps by Santee Cooper, do exhibit some boundaries and high water marks differing from those seen on the Harza Map and Drawing No. 4200-A10 and these boundary lines may well be 100 feet in from the 76.8 foot elevation. However, these maps were based on 1977 aerial photography and were not in existence until 1979, and therefore could not have been within the contemplation of parties when the property was conveyed in 1949.

CONCLUSIONS OF LAW

The Plaintiff has failed to satisfy his burden of proof. The Plaintiff obviously has the burden of proof, in this as in any case, by the greater weight of the evidence. Additionally, because the Defendant is a state agency, the case of The State of South Carolina vs. Fain, 273 SC 748, 259 SE 2d 606 (1979) stands for the proposition that the State comes into court with presumption of title, and if the individual is to prevail, he must recover on the strength of his own title. Therefore, a grant or deed by the government to an individual is construed most strongly against the individual and in favor of the government. As noted above, the original conveyance from Santee Cooper to the Plaintiff's predecessors-in-title, along with every subsequent conveyance, recites acreage of either 3.8 ± or 4.0 acres. Additionally, Daniel M. Darby, the Plaintiff in this action, candidly admitted during testimony at trial that he thought he was buying a 4 acre tract of land from his grantor, his uncle. Given these facts and the heightened burden of proof, the Plaintiff has failed to prove his case and title to all property at issue except for the 3.8 acres +- conveyed by the Davis and Bell Deed as shown on Drawing No. 4200-A10 shall remain vested in Santee Cooper.

South Carolina Code Section 30-5-250 states that when a deed refers to boundaries, metes, courses, or distances of the property conveyed which are shown on any recorded plat, and when the deed refers to the book and page number of the recorded plat, the boundaries, metes, courses or distances as shown on the plat control. See Blue Ridge Realty Company v. Williamson, 145 S.E.2d 922, 247 S.C. 112 (1965). This case was decided under the predecessor to South Carolina Code Section 30-5-250 and reaffirms that owners purchasing lots described on a recorded plat are bound by the plat description. Further, South Carolina courts have consistently held that "when maps, plats or field notes are referenced in the grant or conveyance, they are incorporated into the instrument,

bind the grantor and his successors and are usually held to furnish the true description of the boundaries of the land.” Carter, South Carolina Boundary Compendium (2d Ed. 2003). See Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 16 S.E. 2d 816 (1941); Hammond v. Lindsay, 277 S.C. 182, 284 S.E. 2d 581 (1981); Hobony Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E. 2d 133 (1979). See also the Referee’s Report, Bell v. SCPSA (Defendant’s Exhibit 15 concerning property in Plaintiff’s chain of title). The Plaintiff is bound by the plat description set forth on Drawing No. 4200-A10 referenced in the Bell and Davis Deed.

Even if Drawing No. 4200-A10 is in error, it conveys the tract that the parties intended to sell and buy and neither party ever anticipated or contemplated the conveyance of 27 acres. See Lancaster v. Smithco, Inc., 144 S.E. 2d 209, 246 SC 464 (1965), which held that a discrepancy between description on a plat and a deed, the purpose and effect of a plat reference on a deed is ordinarily one of the intentions of the parties to be determined from the whole instrument and the circumstances surrounding its execution. Drawing No. 4200-A10 controls because it is the document that indicated the intent of the parties and the document which limited the size of the tract to 3.8 +-acres.

With regard to Plaintiff’s argument that natural boundaries control, the case of Smith v. Durant, 113 S.E. 2d 349, 236 SC 80 (1960) is instructive. This case involved a conveyance under an admittedly mistaken and erroneous plat. The Court allowed evidence to identify the land intended to be conveyed. It cited the rule of priorities to determine the description of the property to be conveyed. The Court indicated that, while natural boundaries are traditionally a primary determinant of property description, the rule is not inflexible. The Court then held that the vital question in determining the property conveyed is “the intent of the Grantor at the time the deed is executed.” The clear intent of Santee Cooper in 1949 was to convey the 3.8+- acres depicted as SR-461 on Drawing No. 4200-A10 to Plaintiff’s predecessor in title.

Plaintiff also argues that Santee Cooper's internal "C" Maps should control. These maps were created in 1979, thirty years after the original conveyance to Plaintiff's predecessor in title. South Carolina Courts have held that the general rule is whether the lines of senior and junior surveys conflict, the lines of the senior survey control. See Kirkland v. Goss, 286 S.C. 193, 332 S.E. 2d 546 (Ct. App. 1985)⁴. Therefore, even if these maps were relevant to show intent, which is impossible since they did not exist at the time of the original conveyance, the lines of the senior survey, Drawing No. 4200-A10, control.

Therefore, based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. The property conveyed to the Plaintiff's predecessor in title by Santee Cooper has boundaries as are described in the Bell and Davis Deed, dated November 18, 1949 and recorded in Book C-14 at page 21 in the Office of the Register of Deeds for Clarendon County and the referenced Plat, Drawing No. 4200-A10, and consists of 3.8+- acres as is set forth therein.
2. The property conveyed to the Plaintiff by his predecessor in title consists of 3.8+- acres and has boundaries as is described in the Bell and Davis Deed, dated November 18, 1949 and the referenced Plat, Drawing No. 4200-A10, recorded in Book C-14 at page 21 in the Office of the Register of Deeds for Clarendon County.
3. The correct legal description and location for the property conveyed to Plaintiff by his predecessor in title is as shown on the Plat, Drawing No. 4200-A10, referenced in the Bell and Davis Deed, dated November 18, 1949 and recorded in Book C-14 at page 21 in

⁴ I also defer to the wisdom of our Supreme Court, which held in the Bell matter that the Harza Plats provide "ample factual support" of the location of the boundary line in question, and is,

the Office of the Register of Deed for Clarendon County.

4. The Elliott Plat, entitled "A Tract of Land Containing Twenty Six and 64/100 (26.64) Acres of Land. Survey Completed September 7, 2007", and created at the direction of Plaintiff subsequent to his purchase of the property, is incorrect and does not accurately reflect the boundaries of Plaintiff's property.
5. The undated unrecorded Quit Claim Deed prepared at Plaintiff's direction subsequent to the pendency of this litigation and referencing the incorrect Elliott Plat is also incorrect and does not accurately reflect the boundaries of Plaintiff's property.
6. The Plaintiff has no right, title or interest to any other Santee Cooper properties as may be claimed in the Complaint or alleged by the Elliott Plat or the Quit Claim Deed.
7. Because Plaintiff caused the Elliott Plat to be recorded at the Register of Deeds for Clarendon County, on January 14, 2010 at Plat Book 1099, Page 3, during the pendency of this litigation, and prior to the property boundaries being determined by this Court, and because he caused to have executed an unrecorded Quit Claim Deed based upon the Elliott Plat, he has created a potential cloud upon the title of Santee Cooper's property. Therefore, I direct that this Order and a copy of Drawing No. 4200-A10 (Defendant's Exhibit 7) which is attached hereto and incorporated by reference, be recorded and indexed in both the Grantor and Grantee Indices in the Office of the Register of Deeds for Clarendon County so that the true property boundaries are clear and of record.
8. The parties have stipulated that the Court reserves jurisdiction to entertain the Plaintiff's Second Cause of Action, in the event the parties are unable to resolve it by agreement; however, pursuant to Rule 54(b) SCRPC the Court finds and hereby certifies, that there

therefore, the law of the case.

is no just reason to delay entry of final judgment as to Plaintiff's First Cause of Action,
and, subject to consideration of any post trial motions, hereby directs the entry of final
judgment as to Plaintiff's First Cause of Action.

IT IS SO ORDERED.

S/THOMAS W. Cooper Jr
THOMAS W. COOPER, JR.
Circuit Court Judge, Retired
Special Referee

October 1st 2010
Manning, South Carolina

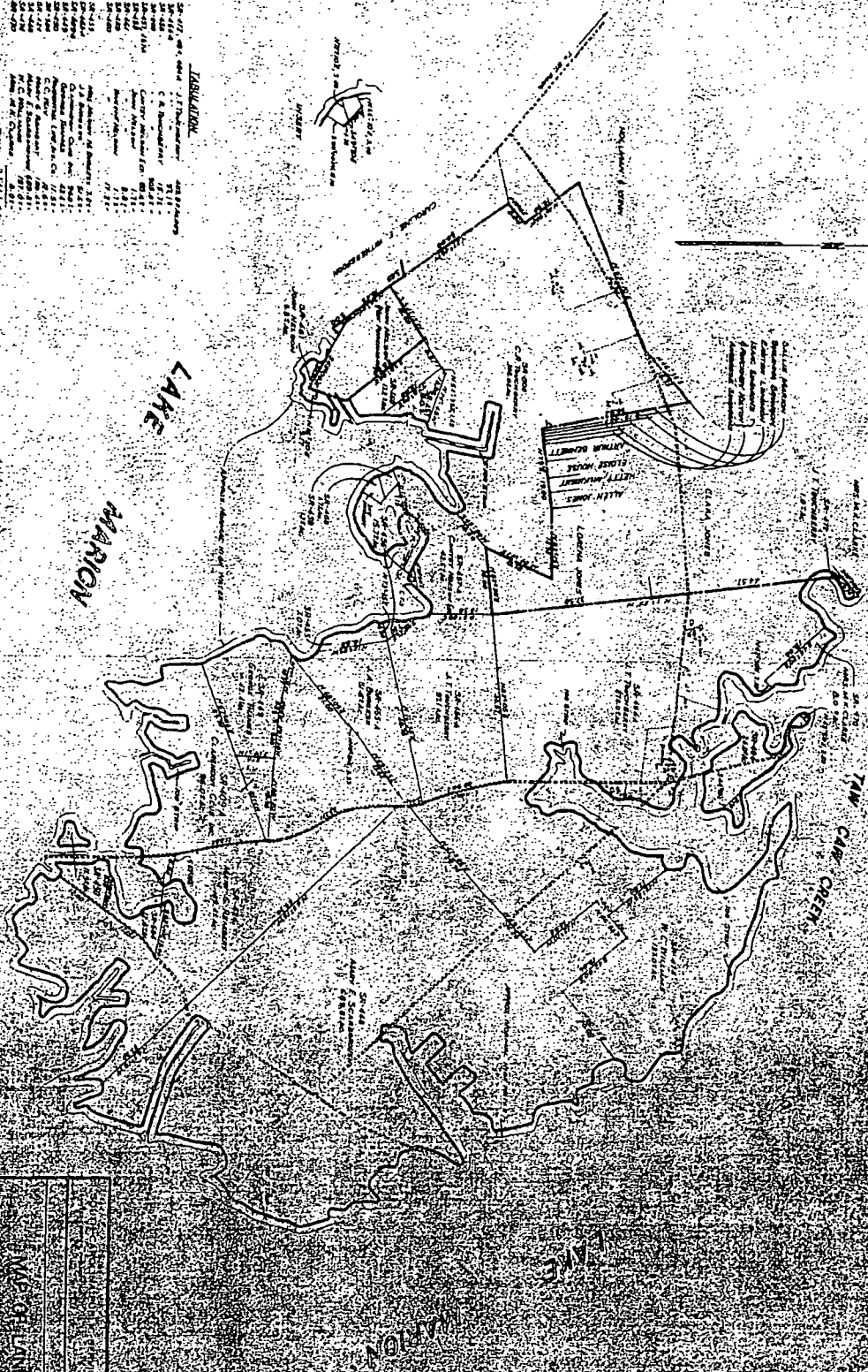
TABLE A-100

Station	Latitude	Longitude	Remarks
10-111	44° 00' N	121° 00' W	Point of departure
10-112	44° 00' N	121° 00' W	Point of departure
10-113	44° 00' N	121° 00' W	Point of departure
10-114	44° 00' N	121° 00' W	Point of departure
10-115	44° 00' N	121° 00' W	Point of departure
10-116	44° 00' N	121° 00' W	Point of departure
10-117	44° 00' N	121° 00' W	Point of departure
10-118	44° 00' N	121° 00' W	Point of departure
10-119	44° 00' N	121° 00' W	Point of departure
10-120	44° 00' N	121° 00' W	Point of departure
10-121	44° 00' N	121° 00' W	Point of departure
10-122	44° 00' N	121° 00' W	Point of departure
10-123	44° 00' N	121° 00' W	Point of departure
10-124	44° 00' N	121° 00' W	Point of departure
10-125	44° 00' N	121° 00' W	Point of departure
10-126	44° 00' N	121° 00' W	Point of departure
10-127	44° 00' N	121° 00' W	Point of departure
10-128	44° 00' N	121° 00' W	Point of departure
10-129	44° 00' N	121° 00' W	Point of departure
10-130	44° 00' N	121° 00' W	Point of departure
10-131	44° 00' N	121° 00' W	Point of departure
10-132	44° 00' N	121° 00' W	Point of departure
10-133	44° 00' N	121° 00' W	Point of departure
10-134	44° 00' N	121° 00' W	Point of departure
10-135	44° 00' N	121° 00' W	Point of departure
10-136	44° 00' N	121° 00' W	Point of departure
10-137	44° 00' N	121° 00' W	Point of departure
10-138	44° 00' N	121° 00' W	Point of departure
10-139	44° 00' N	121° 00' W	Point of departure
10-140	44° 00' N	121° 00' W	Point of departure
10-141	44° 00' N	121° 00' W	Point of departure
10-142	44° 00' N	121° 00' W	Point of departure
10-143	44° 00' N	121° 00' W	Point of departure
10-144	44° 00' N	121° 00' W	Point of departure
10-145	44° 00' N	121° 00' W	Point of departure
10-146	44° 00' N	121° 00' W	Point of departure
10-147	44° 00' N	121° 00' W	Point of departure
10-148	44° 00' N	121° 00' W	Point of departure
10-149	44° 00' N	121° 00' W	Point of departure
10-150	44° 00' N	121° 00' W	Point of departure

REVISIONS

No.	Date	Description
1	10/1/50	Initial issue
2	10/1/50	Initial issue
3	10/1/50	Initial issue
4	10/1/50	Initial issue
5	10/1/50	Initial issue
6	10/1/50	Initial issue
7	10/1/50	Initial issue
8	10/1/50	Initial issue
9	10/1/50	Initial issue
10	10/1/50	Initial issue

MAP OF LANDS
LAKE MARION PENINSULA
 4200 AID
 10/1/50



PLAYER & McMILLAN, L.L.C.
ATTORNEYS AT LAW

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Thomas E. Player, Jr.
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February 2, 2011

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Mr. Bruce H. Peggs, CVR-CM
536 Benton Court
Sumter, South Carolina 29150-3922

RE: Daniel Darby vs. South Carolina Public Service Authority
Civil Action No.: 2008-CP-14-354

Dear Bruce:

This will confirm our telephone conversation wherein you agreed to furnish the transcript of record for the hearing in the above matter which was held on August 4, 2010.

Best regards.

Yours truly,


Thomas E. Player, Jr.

TEP, Jr./jv

cc: Elizabeth H. Warner, Esquire
Mr. Ben Sadler, Esquire
SC Office of Court Administration
✓SC Court of Appeals

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	DOCKET NUMBER: 2008 -cp-14-354
COUNTY OF CLARENDON	)	
Daniel Darby,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF MAILING
vs.	)	
	)	
South Carolina Public Service	)	
Authority,	)	
	)	
Defendant.	)	
	)	

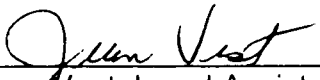
This is to certify that a copy of Request for Transcripts of Record in the foregoing matter was deposited in the United States mail, with first class postage affixed thereto, addressed to the following:

Mr. Bruce H. Peggs, CVR-CM
536 Benton Court
Sumter, South Carolina 29150-3922

Ms. Elizabeth H. Warner, Esquire
Mr. Ben Sadler, Esquire
Santee Cooper
One Riverwood Drive
Moncks Corner, South Carolina 29461

Ms. Rosalyn W. Frierson
Office of the Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

The Honorable Kenneth A. Richstad
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211


Jean West, Legal Assistant

February 2, 2011

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