THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
*Court of Common Pleas*

*R. Lawton McIntosh, Circuit Court Judge*

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**Case No. 2011-CP-32-01010**
**Tracking No. 2013-002056**

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Glenda R. Couram,

*Appellant,*

v.

Mr. & Mrs. Christopher Hooker, Mr. and Mrs. Carl Reibold; All persons claiming any Legal or Equitable Right, Title, Estate, Lien or interest in the Property Described in the Complaint Adverse to the Plaintiff's; Cox & Dinkins, Inc., Fair Builders/Developers, Inc., Donald "Don" Rawls & Steve Fair in their official and individual capacities, Carolina Water Svc., (CWS), Carolina Trace Utilities, Inc., & Utilities, Inc., Corporate Offices, (CWS),

*Defendants,*

Of whom Mr. & Mrs. Hooker, Mr. & Mrs. Reibold, Cox & Dinkins, Inc., Donald "Don" Rawls and Steven A. Fair are

*Respondents.*

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# FINAL BRIEF OF RESPONDENTS COX & DINKINS, INC. AND J. DONALD "DON" RAWLS

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## STATEMENT OF THE CASE

In 1994, Appellant purchased a parcel of real property located in Lexington, South Carolina ("Couram Property"). At the time of purchase, the Couram Property adjoined a parcel of undeveloped land being used as a neighborhood park ("Adjoining Property") and land owned by Carolina Water Service, Inc. ("CWS Property"). Appellant contends that she had been informed by the seller at the time of purchase that the Adjoining Property would not be developed.

In 2004, however, Respondent Steve A. Fair and Fair Builders, Inc. ("Respondents Fair") purchased the Adjoining Property at a tax sale. Respondent Cox and Dinkins, Inc. ("Respondent Cox & Dinkins") performed a survey of the undeveloped parcel and prepared a plat based on the survey ("Cox & Dinkins Plat"). Respondents Fair subsequently developed the Adjoining Property into four residential lots ("Lots A, B, C, and D"), two of which share a property boundary with the Couram Property ("Lots A & B"). Respondents Mr. and Mrs. Christopher Hooker ("Respondents Hooker") subsequently purchased Lot A. Respondents Mr. and Mrs. Carl Riebold ("Respondents Riebold") subsequently purchased Lot B.

Appellant has had an ongoing property dispute with Respondents Hooker and Riebold. As a result, on March 11, 2011, Appellant filed an action against, inter alia, Respondents Hooker and Respondents Riebold seeking damages for nuisance, trespass, conversion, harassment, and civil conspiracy.

On March 25, 2011, Respondent Donald Rawls ("Respondent Rawls"), an employee of Respondent Cox & Dinkins, met Appellant at her request to provide her with information about her property and the Cox & Dinkins Plat. After the meeting,

Appellant amended her action to include claims against Respondent Cox & Dinkins and Respondent Rawls.

On July 14, 2011, Respondent Cox & Dinkins and Respondent Rawls filed a motion to dismiss Appellant's claims. After considering the arguments of the parties, The Honorable R. Knox McMahon dismissed Appellant's various claims against Respondent Cox & Dinkins and Respondent Rawls on the grounds that Appellant had failed to state facts sufficient to constitute a cause of action and because Appellant had not filed an affidavit from a professional land surveyor to support her claims.

Appellant then filed a Second Amended Complaint in which Appellant asserted alternative causes of action against, inter alia, Respondent Cox & Dinkins and Respondent Rawls. Appellant's claims against Respondent Cox & Dinkins and Respondent Rawls included causes of action for (1) intentional infliction of emotional distress, (2) slander of title and defamation, (3) continuing civil and criminal trespass, and (4) civil conspiracy.

On July 8, 9, 10, 2013, Appellant's various causes of action were tried in the Lexington County Court of Common Pleas before The Honorable R. Lawton McIntosh and a jury. After the presentation of Appellant's case-in-chief, Judge McIntosh granted, inter alia, Respondent Cox & Dinkins' and Respondent Rawls' motions for directed verdict as to each of Appellant's causes of action against them. Only Appellant's trespass cause of action against Respondent Carl Riebold and Respondent Christopher Hooker proceeded to the jury,[1] which returned a verdict in favor of those defendants.

[1] The trial court granted motions for directed verdict as to all causes of action asserted against Ms. Hooker and Ms. Riebold after Appellant conceded that she had presented no evidence in support of her claims against them. (R. p. 454, lines 11-25).

On July 23, 2013, Appellant filed a Motion for Reconsideration, Set Aside Judgment, and New Trial, which Judge McIntosh denied on July 30, 2013.

Appellant filed notice of this appeal on September 5, 2013.

## STATEMENT OF THE FACTS

In 1994, Appellant Glenda R. Couram purchased from Steve Hendrix Builders, Inc., a parcel of real property located at 104 Macaw Lane in Lexington, South Carolina ("Couram Property").[2] (*See* R. p. 674)[3] A closing survey prepared for Appellant by Drafts Surveying, Inc., ("Closing Survey") indicates that at the time of purchase the Couram Property fronted Macaw Lane for a distance of 69.87 feet. (R. p. 678)[4] The deed conveying the parcel to Appellant also states, inter alia, that the land conveyed ran "along Macaw Lane, along which it fronts for a distance of 69.87 feet". (R. p. 674) The Closing Survey further indicates that the Couram Property is delineated by iron pins found at each corner of the parcel. (R. p. 678)

At the time of purchase, the Couram Property adjoined to the south a parcel of undeveloped land being used as a neighborhood park ("Adjoining Property") and a small parcel of land that contained a well owned by Carolina Water Service, Inc. ("CWS Property"). (*Id.*) According to the Closing Survey, a 15 foot wide water line easement ran along the southern boundary of the Couram Property connecting the otherwise isolated CWS Property to Macaw Lane. (*Id.*) A five foot wide utility easement also runs along the southern boundary of the Couram Property. (*Id.*)

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[2] The parcel of real property is depicted in Deed Book 2950 at page 059 in the Office of Register of Mense Conveyances for Lexington County, South Carolina. (R. p. 674)

[3] Respondents Cox & Dinkins included this material in their Designation of Matter to be Included in the Record on Appeal dated July 16, 2014, pursuant to Rule 209(b), *SCACR*. Appellant failed to include this material as introduced at trial in the Record on Appeal. As such, these respondents moved on September 26, 2014, for an Order compelling Appellant to either (1) conform the Record on Appeal to include this material in accordance with Rule 210(c), or (2) produce a Supplemental Record to including this material pursuant to Rule 212, SCRAP. As of the date of this filing, the motion has not been ruled upon. This reference is Cox & Dinkins' good faith effort to comply with Rule 211(b), *SCACR*.

[4] *See* supra note 3.

Appellant contends that she had been informed by Steve Hendrix Builders, Inc., at the time of her purchase that the Adjoining Property would not be developed. (R. p. 353 lines 21-23) In 2004, however, Respondent Steve A. Fair and Fair Builders, Inc. ("Respondents Fair") purchased the Adjoining Property at a tax sale and retained Respondent Cox and Dinkins, Inc. ("Respondents Cox & Dinkins") to perform a survey of the newly purchased property and a plat based on the survey depicting four new residential lots. (*See* R. p. 665)[5] Respondent Cox & Dinkins issued the requested plat on June 30, 2004 ("Cox & Dinkins Plat"). (*Id.*)

The Cox & Dinkins Plat primarily describes the manner in which the Adjoining Property had been divided into the four residential lots described as Lots A, B, C, and D, two of which, Lots A and B share a common property boundary line with the Couram Property. (*Id.*) In accordance with South Carolina Land Surveying Standards, the Cox & Dinkins Plat also generally describes the Couram Property and the CWS Property.[6] (*See id.*) The description includes the notation of three iron pins found along the common property boundary separating Lots A and B from the Couram Property and the CWS Property and a notation that the Couram Property fronts Macaw Lane for a distance of 69.86 feet, (*see id.*), which varies in measurement from the Closing Survey and Deed by 0.01 feet, 0.12 inches, or less than 1/8 of an inch, (*compare* R. p. 665 *with* R. p. 678).

Respondents Mr. and Mrs. Christopher Hooker ("Respondents Hooker") subsequently purchased Lot A, which is located at 122 Toucan Way in Lexington, South Carolina. (R. p. 465, lines 7-24) Respondents Mr. and Mrs. Carl Riebold ("Respondents

[5] *See* supra note 3.

[6] The plat displays the "[l]ot and block numbers and/or full names of adjoining land owners, and the names and/or numbers of principal highways, roads, streets or railroads . . . with their rights-of-way" in accordance with the South Carolina Land Surveying Standards. S.C. CODE ANN. REGS. § 49-460(v).

Riebold") subsequently purchased Lot B, which is located at 118 Toucan Way, Lexington, South Carolina. (R. p. 516, lines 5-12, p. 518, lines 2-4)

Appellant has had an ongoing property dispute with Respondents Hooker and Riebold that eventually resulted in police involvement on December 15, 2010. (R. p. 300, lines 13-22, p. 467, lines 7-23, p. 518, lines 11-21) At the time, Appellant generally alleged that Respondents Hooker and Riebold had trespassed on her property and had asserted invalid claims to a portion of her property. (*See* R. p. 301, line 1-p. 302, line 6) As a result of this dispute, Appellant eventually filed an action against, inter alia, Respondents Hooker, and Respondents Riebold on March 11, 2011. (R. pp. 31-49)

Appellant also contacted the Lexington County Register of Deeds Office ("Register of Deeds") to investigate the scope of her property interest. (R. p. 183). An individual at the Register of Deeds eventually referred Appellant to Respondent Cox & Dinkins after she raised specific questions about the Cox & Dinkins filed with the Register of Deeds. (*Id.*)

On March 25, 2011, Respondent Donald "Don" Rawls ("Respondent Rawls"), an employee of Respondent Cox & Dinkins, met with Appellant at her request to provide her with information about her property and about surveys in the possession of Respondent Cox & Dinkins. (R. p. 182) After the meeting, Appellant wrote Respondent Rawls a letter thanking him and memorializing the conversation. (R. pp. 182-86) In that correspondence, Appellant also alleged that Respondent Cox & Dinkins must have trespassed on her property to complete their survey and the resulting Cox & Dinkins Plat, specifically that someone must have entered her land to place a particular iron pin depicted on the Cox & Dinkins Plat. (R. p. 184) Appellant further alleged that others had

relied upon the Cox & Dinkins Plat filed with the Register of Deeds to assert invalid claims to her property. (R. p. 186)

After this meeting, Appellant filed an Amended Complaint that included, inter alia, several causes of action against Respondent Cox & Dinkins and Respondent Rawls.[7] On July 14, 2011, Respondent Cox & Dinkins and Respondent Rawls filed a motion to dismiss Appellant's Amended Complaint. (R. pp. 62-63) After considering the arguments of the parties, The Honorable R. Knox McMahon dismissed Appellant's various claims against Respondent Cox & Dinkins and Respondent Rawls on the grounds that Appellant had failed to state facts sufficient to constitute a cause of action and because Appellant had not filed an affidavit from a professional land surveyor to support her claims. (R. pp. 8-11)

Appellant then filed a Second Amended Complaint in which Appellant asserted, inter alia, alternative causes of action against Respondent Cox & Dinkins and Respondent Rawls, including causes of action for (1) intentional infliction of emotional distress, (2) slander of title and defamation, (3) continuing civil and criminal trespass, and (4) civil conspiracy. (R. pp. 65-86, 87-107) Appellant also asserted against other parties causes of action for continuing nuisance, invasion of privacy, damages for injury to real property, and quiet title/adverse possession. (*Id.*) On March 7, 2013, The Honorable Paul M. Burch dismissed Appellant's quiet title/adverse possession cause of action against Carolina

[7] Respondents Cox & Dinkins included this material in their Designation of Matter to be Included in the Record on Appeal dated July 16, 2014, pursuant to Rule 209(b), *SCACR*. Appellant failed to include a complete version of this material in the Record on Appeal. As such, these respondents moved on September 26, 2014, for an Order compelling Appellant to either (1) conform the Record on Appeal to include this material in accordance with Rule 210(c), or (2) produce a Supplemental Record to including this material pursuant to Rule 212, SCRAP. As of the date of this filing, the motion has not been ruled upon. This reference is Cox & Dinkins' good faith effort to comply with Rule 211(b), *SCACR*.

Water Service, Inc. ("CWS") after vesting in Appellant sole rights to the CWS Property.[8] (R. pp. 20-22)

On July 8, 9, 10, 2013, Appellant's remaining causes of action were tried in the Lexington County Court of Common Please before The Honorable R. Lawton McIntosh and a jury. (R. pp. 217-647) After the presentation of Appellant's case-in-chief, Judge McIntosh granted, inter alia, Respondent Cox & Dinkins' and Respondent Rawls' motions for directed verdict as to each of Appellant's causes of action, including Appellant's causes of action for continuing nuisance and invasion of privacy, on the grounds that Appellant had failed to present to the jury evidence in support of the causes of action. (R. pp. 432-46; p. 461, line 11-p. 462, line 20) Judge McIntosh further held that the assertion of the trespass cause of action against Respondent Cox & Dinkins and Respondent Rawls had been barred by the applicable statutes of limitations. (R. p. 445, line 5-p. 446, line 8) Only Appellant's trespass cause of action against Respondent Carl Riebold and Respondent Christopher Hooker proceeded to the jury,[9] (R. p. 622, line 23-p. 623, line 5), which returned a verdict in favor of those defendants, (R. pp. 27-28).

On July 23, 2013, Appellant filed a Motion for Reconsideration, Set Aside Judgment, and New Trial, which Judge McIntosh denied on July 30, 2013. (R. pp. 29-30)

Appellant filed notice of this appeal on September 5, 2013. (R. pp. 173-74)

[8] Appellant had rejected an offer transfer the CWS Property to her via a quit claim deed because she demanded the company also pay her an unknown amount in damages. (R. p. 21)

[9] The trial court granted motions for directed verdict as to all causes of action asserted against Ms. Hooker and Ms. Riebold after Appellant conceded that she had presented no evidence in support of her claims against them. (R. p. 454, lines 11-25)

## STANDARD OF REVIEW

Appellate courts "may not decide an issue neither presented to the circuit court nor raised by proper exception on appeal." *Connolly v. People's Life Ins. Co. of South Carolina*, 299 S.C. 348, 352, 384 S.E.2d 738, 740 (1989). "Issue preservation requires a party to preserve an issue both at trial and in presentation of the issue on appeal." *Beverly S. v. Kayla R.*, 395 S.C. 399, 401, 718 S.E.2d 224, 225 (Ct. App. 2011) (citing *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008)). Nevertheless, a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000); *see also* Rule 220(c), SCACR.

"When reviewing a motion for directed verdict or JNOV, an appellate court must employ the same standard as the trial court." *Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495-96 (Ct. App. 2006) (citing *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Proctor v. Dep't of Health and Envtl. Control*, 368 S.C. 279, 292, 628 S.E.2d 496, 503 (Ct. App. 2006); *The Huffines Co., L.L.C. v. Lockhart*, 365 S.C. 178, 187, 617 S.E.2d 125, 129 (Ct. App. 2005)). "In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence." *Sims v. Giles*, 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001) (citing *Long v. Norris & Assocs., Ltd.*, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000); *Jones v. General Elec. Co.*, 331 S.C. 351, 503 S.E.2d 173 (Ct. App. 1998)). "When the evidence yields only one inference, a directed verdict in favor of the moving party is

proper." *Id.* at 714, 541 S.E.2d at 860 (citing *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Arthurs v. Aiken County*, 338 S.C. 253, 525 S.E.2d 542 (Ct. App. 1999)).

"[A]n appellate court views the evidence and all reasonable inferences in a light most favorable to the non-moving party." *Wright*, 372 S.C. at 18, 640 S.E.2d at 496 (citing *Swinton Creek Nursery*, 334 S.C. at 476, 514 S.E.2d at 130; *Mullinax v. Brown Amusement*, 326 S.C. 453, 456, 485 S.E.2d 103, 105 (Ct. App. 1997)). "[H]owever, [the court] cannot ignore facts unfavorable to that party and . . . must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996) (citing *Haulbrooks v. Overton*, 295 S.C. 380, 382, 368 S.E.2d 676, 678 (Ct. App. 1988). "If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created and the motion was properly granted." *Id.* (citing *Whelan v. Welch*, 304 S.C. 548, 550, 405 S.E.2d 836, 837 (Ct. App. 1991)).

"The trial court can only be reversed by this Court when there is no evidence to support the ruling below." *Strange v. South Carolina Dept. of Highways and Public Transp.*, 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994) (citing *Vacation Time of Hilton Head Inc. v. Lighthouse Realty, Inc.*, 286 S.C. 261, 267, 332 S.E.2d 781, 785 (Ct. App. 1985)). Accordingly, a reviewing court "will affirm a directed verdict where there is no evidence on any one element of the alleged cause of action."*Guffey v. Columbia/Colleton Regional Hosp., Inc.*, 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005) (citing *First State Savings and Loan v. Phelps*, 299 S.C. 441, 446-47, 385 S.E.2d 821, 824-25 (1989)).

"Absent a clear abuse of discretion amounting to an error of law, the trial judge's ruling on the admission of evidence will not be disturbed on appeal." *Hoeffner v. The Citadel*, 311 S.C. 361, 365, 429 S.E.2d 190, 192 (1993) (citing *Hofer v. St. Clair*, 298 S.C. 503, 381 S.E.2d 736 (1989)). "For an appellate court to reverse the trial court for erroneously excluding evidence the appellant must show both the error of the ruling and prejudice resulting therefrom." *Lucas v. Sara Lee Corp.*, 307 S.C. 495, 498, 415 S.E.2d 837, 839 (Ct. App. 1992) (citing *First State Savings and Loan*, 299 S.C. at 449, 385 S.E.2d at 826).

"An abuse of discretion occurs either when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support." *Patel v. Patel*, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004) (citing *Townsend v. Townsend*, 356 S.C. 70, 73, 587 S.E.2d 118, 119 (Ct. App. 2003)). "[W]henever an appeal has been taken upon this ground, the burden rests upon the appellant to show that there has been abuse of discretion." *Baggett v. Strickland*, 158 S.C. 60, 60, 155 S.E. 237, 237 (1930).

"'As a general rule, [however,] where a court or judge is invested with power to be exercised at discretion, such power is absolute, and, when exercised, it is final.'" *Id.* at 60, 155 S.E. at 237 (quoting *Michalson v. Roundtree*, 51 S. C. 405, 405, 29 S. E. 66, 67 (1898)). Accordingly, "[w]hen an appellate court is in agreement with a discretionary ruling or is only mildly in disagreement . . . the trial judge did not abuse his discretion." *Rish v. Rish By and Through Barry*, 296 S.C. 14, 15-16, 370 S.E.2d 102, 103 (Ct. App. 1988).

## ARGUMENT

After the presentation of Appellant's case-in-chief, The Honorable R. Lawton McIntosh, Circuit Court Judge, granted directed verdicts in favor of Respondent Cox and Dinkins, Inc. ("Respondent Cox & Dinkins") and Respondent Donald Rawls ("Respondent Rawls") (collectively "Respondents Cox & Dinkins & Rawls") and dismissed with prejudice Appellant's causes of action against them for (1) invasion of privacy, (2) continuing nuisance, (3) intentional infliction of emotional distress, (4) slander of title, (5) continuing civil and criminal trespass, and (6) civil conspiracy. (R. pp. 432-46; p. 461, line 11-p. 462, line 20) Judge McIntosh held that Appellant had failed to present to the jury any evidence in support of the causes of action. (*See id.*) Furthermore, Judge McIntosh determined, in the alternative, that, had Appellant presented even a scintilla of evidence in support of the cause of action for trespass, the claim "would be barred by [the] statute of limitations because it occurred in 2004." (R. p. 445, line 5-p. 446, line 8)

This Court should affirm the circuit court's grants of directed verdict in favor of Respondents Cox & Dinkins & Rawls on the grounds that the record demonstrates that Appellant failed to introduce any admissible evidence to support the existence of numerous essential elements of the various causes of action asserted against Respondents Cox & Dinkins & Rawls. (*See* p. 298, line 13-p. 432, line 4) This Court should also affirm the circuit court for the additional reasons discussed in this brief, including Judge McIntosh's determination that any cause of action for trespass asserted by Appellant against Respondents Cox & Dinkins & Rawls is barred by the statute of limitations.

During the presentation of Appellant's case-in-chief, Judge McIntosh also excluded certain opinion testimony proffered by Appellant on the grounds that Appellant had not proffered herself as an expert in nor established her expertise in the interpretation of certain aspects of documents prepared by professional land surveyors. (R. p. 361, line 21-p. 362, line 12; p. 364, line 1-p. 367, line 9) Judge McIntosh also denied Appellant's request to recall two witnesses after their examination had been concluded by all parties and the witnesses had been released by consent of the parties. (R. p. 340, line 5-p. 343, line 6, p. 431, lines 9-15)

As the record demonstrates that Judge Lawton did not abuse the discretion afforded a trial judge, this Court should also affirm these evidentiary rulings.

## I. BECAUSE APPELLANT FAILED TIMELY TO ALLEGE AN INVASION OF PRIVACY CAUSE OF ACTION AGAINST RESPONDENTS COX & DINKINS AND RAWLS AND FAILED TO PRESENT TO THE JURY ANY EVIDENCE IN SUPPORT OF THE CAUSE OF ACTION, THE CIRCUIT COURT PROPERLY GRANTED A DIRECTED VERDICT IN FAVOR OF THESE RESPONDENTS.

"To state a cause of action for invasion of privacy the plaintiff must allege either: (1) the unwarranted appropriation or exploitation of his personality; or (2) the publicizing of his private affairs with which the public has no legitimate concern; or (3) the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities." *Wright v. Sparrow*, 298 S.C. 469, 471, 381 S.E.2d 503, 505 (Ct. App. 1989) (citing *Corder v. Champion Road Machinery Inter. Corp.*, 283 S.C. 520, 525, 324 S.E.2d 79, 82 (Ct. App. 1984); *Rycroft v. Gaddy*, 281 S.C. 119, 123, 314 S.E.2d 39, 42 (Ct. App. 1984)).

"Wrongful appropriation of personality involves the intentional, unconsented use of the plaintiff's name, likeness, or identity by the defendant for his own benefit." *Snakenberg v. Hartford Cas. Ins. Co., Inc.*, 299 S.C. 164, 170, 383 S.E.2d 2, 5-6 (Ct. App. 1989). "Wrongful publicizing of private affairs involves a public disclosure of private facts about the plaintiff." *Id.* at 170, 383 S.E.2d at 6. "The defendant must intentionally disclose facts in which there is no legitimate public interest—there is no right of privacy in public matters." *Id.* "Additionally, the disclosure must be such as would be highly offensive and likely to cause serious mental injury to a person of ordinary sensibilities." *Id.* Wrongful intrusion into private affairs requires a plaintiff to plead and prove (1) an intrusion, (2) into something that one normally expects will be free from exposure to the defendant, (3) that is substantial and unreasonable enough to be legally cognizable, (4) done willingly so that the actor either (a) desires the result of his conduct or (b) knows or ought to know the result will follow from his conduct. *Id.* at 171-72, 383 S.E.2d at 6 (citing *Meetze v. Associated Press*, 230 S.C. 330, 337-38, 95 S.E.2d 606, 610 (1956); *Rycroft*, 281 S.C. at 123, 314 S.E.2d at 42; *Bazley v. Tortorich*, 397 So.2d 475, 481 (La. 1981); *Kelley v. Post Publishing Company*, 327 Mass. 275, 278, 98 N.E.2d 286, 287 (1951)).

After the presentation of Appellant's case-in-chief, The Honorable R. Lawton McIntosh directed a verdict in favor of Respondent Cox & Dinkins and Respondent Rawls as to Appellant's invasion of privacy cause of action[10] after determining that

[10] Appellant did not assert an invasion of privacy cause of action against Respondent Cox & Dinkins or Respondent Rawls nor move the circuit court at anytime to amend the pleadings to assert such a cause of action against Respondent Cox & Dinkins or Respondent Rawls. (*Compare* R. pp. 65-86, 87-107 *and* R. p. 223, line 1-p. 432, line 4, *with* S.C. R. CIV. P. 15(a), (b)) Although Appellant informed Judge McIntosh on the day of trial that she was asserting all six causes of action against Respondents Cox & Dinkins & Rawls, (R. p. 233, lines 12-14), Appellant did not seek leave of the circuit court to amend the pleadings or obtain the written consent of the adverse parties. (*See* R. p. 223, line 1-p. 432, line 4) Furthermore, Appellant did

"there's been absolutely zero testimony about invasion of privacy by any defendant in this matter." (R. p. 432, line 19-p. 433, line 12)

As the record reflects, Appellant presented no evidence that either Respondent Cox & Dinkins or Respondent Rawls (1) appropriated or exploited Appellant's name, likeness, or personality, (2) publicized Appellant's private affairs with which the public has no legitimate concern, (3) or intruded into Appellant's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation. (*See* R. p. 298, line 13-p. 432, line 4) In fact, the only evidence presented during Appellant's case-in-chief regarding interactions between Appellant and Respondent Cox & Dinkins or Respondent Rawls concerned a meeting that Appellant had requested with Respondent Rawls, (R. p. 407, line 25-p. 410, line 7; *see also* R. pp. 182-86)), at which Respondent Rawls had been courteous, (R. p. 410, lines 1-3), and several telephone conversations with Respondent Rawls to set up that meeting, (R. p 407, line 25-p. 408, line 5). Appellant never had any other conversations with any representative of Respondent Cox & Dinkins. (R. p. 410, lines 4-7)

The only other evidence presented during Appellant's case-in-chief concerning Respondent Cox & Dinkins addressed Respondent Cox & Dinkins' performance of a survey of property owned by Respondent Fair and the issuance of a plat in 2004. (*See* R. p. 298, line 13-p. 432, line 4) Appellant testified that she has no personal knowledge of any surveying work completed by either Respondent Rawls or Respondent Cox & Dinkins in 2004. (R. p. 405, line 16-p. 406, line 17) Furthermore, Appellant testified that

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not present any evidence to support an invasion of privacy cause of action against Respondent Cox & Dinkins or Respondent Rawls. (*See* R. p. 298, line 13-p. 432, line 4)

she never saw either Respondent Rawls or any representative of Respondent Cox & Dinkins on her property. (R. p. 405, line 16-p. 405, line 17, p. 407, lines 7-9)

As there is no evidence in the record that either Respondent Cox & Dinkins or Respondent Rawls publicized any private information about Appellant, intruded into any of Appellant's private affairs, or employed Appellant's likeness for their own benefit, this Court should affirm the circuit court's grants of directed verdict in favor of Respondent Cox & Dinkins and Respondent Rawls with regard to Appellant's invasion of privacy cause of action.

## II. BECAUSE APPELLANT FAILED TIMELY TO ALLEGE A CONTINUING NUISANCE CAUSE OF ACTION AGAINST RESPONDENTS COX & DINKINS AND RAWLS AND FAILED TO PRESENT TO THE JURY ANY EVIDENCE IN SUPPORT OF THE CAUSE OF ACTION, THE CIRCUIT COURT PROPERLY GRANTED A DIRECTED VERDICT IN FAVOR OF THESE RESPONDENTS.

An action for private nuisance arises from "the invasion of a private right, namely, the interference with the reasonable enjoyment of [one's] property and the depreciation in its value." *Bowlin v. George*, 239 S.C. 429, 435, 123 S.E.2d 528, 531 (1962). "Generally, a private nuisance is that class of wrongs that arises from the unreasonable, unwarrantable, or unlawful use by a person of his own property, personal or real." *O'Cain v. O'Cain*, 322 S.C. 551, 561, 473 S.E.2d 460, 466 (Ct. App. 1996) (citing *Clark v. Greenville County*, 313 S.C. 205, 437 S.E.2d 117 (1993)). "A continuing nuisance is defined as a nuisance that is intermittent or periodical and is described as one which occurs so often that it is said to be continuing although it is not necessarily constant or unceasing." *Silvester v. Spring Valley Country*, 344 S.C. 280, 287, 543 S.E.2d 563, 566 (Ct. App. 2001) (citing 58 AM. JUR. 2D *Nuisances* § 28 (1989)).

"In resolving issues relating to a private nuisance, [courts] must deal with the conflicting interests of land owners. . . . [that is] the right of one generally to make such lawful use of his property as he may desire and the right of the other to be protected in the reasonable enjoyment of his property." *O'Cain*, 322 S.C. at 560, 473 S.E.2d at 465 (citing *DeBorde v. St. Michael and All Angels Episcopal Church*, 272 S.C. 490, 505-06, 252 S.E.2d 876, 883-84 (1979); *Winget v. Winn–Dixie Stores, Inc.*, 242 S.C. 152, 159, 130 S.E.2d 363, 366 (1963)). Accordingly, "one who has no control over property at the time of the alleged nuisance cannot be held liable therefor." *Clark*, 313 S.C. at 210, 437 S.E.2d at 119 (citing *Peden v. Furman University*, 155 S.C. 1, 1, 151 S.E. 907, 912 (1930)).

In *Clark v. Greenville County*, 313 S.C. 205, 437 S.E.2d 117 (1993), the South Carolina Supreme Court affirmed a trial court's grant of summary judgment as to a nuisance cause of action where the plaintiffs had neither alleged nor produced any evidence that the defendants had control over the land allegedly giving rise to the nuisance or over the alleged nuisance once it had been deposited on the land. *Id.* The *Clark* plaintiffs filed, inter alia, an action for nuisance against, inter alia, companies that had deposited hazardous waste in a landfill years earlier and sought to recover damages for alleged contamination of their property. *Id.* at 206-7, 437 S.E.2d at 118. After concurring that the plaintiffs had produced no evidence that the companies had any control over the landfill or over the hazardous waste once it had been deposited, the *Clark* Court agreed that, as a matter of law, the companies could not be liable under a nuisance theory because they had no control over the property or mechanism of the nuisance. *Id.* at 210, 437 S.E.2d at 119.

After the presentation of Appellant's case-in-chief, The Honorable R. Lawton McIntosh directed a verdict in favor of Respondent Cox & Dinkins and Respondent Rawls as to Appellant's nuisance cause of action,[11] (R. p. 434, line 20-p. 437, line 9), because "the plaintiff admits that she didn't see Cox & Dinkins do anything and her contentions are based on her lack of understanding of what [the Cox & Dinkins Plat] actually is showing." (R. p. 437, lines 3-9)

Like the plaintiffs in *Clark*, Appellant did not allege nor produce any evidence that Respondent Cox & Dinkins or Respondent Rawls had any control over any real or personal property that interfered with the use or enjoyment of her property. (*See* R. p. 298, line 13-p. 432, line 4) Appellant also failed to introduce any evidence that Respondent Cox & Dinkins or Respondent Rawls engaged in any intermittent or periodic conduct that could constitute a continuing interference with Appellant's use and enjoyment of her property. (*Id.*)

Appellant, instead, testified to having no personal knowledge of any surveying work completed by either Respondent Cox & Dinkins or Respondent Rawls in 2004. (R. p. 405, line 16-p. 406, line 17) Appellant also testified that she never saw Respondent Rawls or any representative of Respondent Cox & Dinkins on her property. (R. p. 405, line 16-p. 406, line 17, p. 407, lines 7-9) Appellant further testified that she did not see

[11] Appellant did not assert a continuing nuisance cause of action against Respondent Cox & Dinkins or Respondent Rawls nor move the circuit court at anytime to amend the pleadings to assert such a cause of action against Respondent Cox & Dinkins or Respondent Rawls. (*Compare* R. pp. 65-86, 87-107 *and* R. p. 223, line 1-p. 432, line 4 *with* S.C. R. CIV. P. 15(a), (b)) Although Appellant informed Judge McIntosh on the day of trial that she was asserting all six causes of action against Respondents Cox & Dinkins & Rawls, (R. p. 233, lines 12-14), Appellant did not seek leave of the circuit court to amend the pleadings or obtain the written consent of the adverse parties. (*See* R. p. 223, line 1-p. 432, line 4) Furthermore, Appellant did not present any evidence to support a continuing nuisance cause of action against Respondent Cox & Dinkins or Respondent Rawls. (*See* R. p. 298, line 13-p. 432, line 4)

any representative of Respondent Cox & Dinkins place a pin or any other object on her property. (R. p. 407, lines 3-6).

In fact, in response to Respondent Cox & Dinkins and Respondent Rawls' motion for directed verdict, Appellant admitted: "I don't know if they destroyed the property, I haven't seen." (R. p. 435, lines 9-22) Appellant also conceded at trial that she had not witnessed either Respondent Cox & Dinkins or Respondent Rawls damage any flora on her property. (R. p. 412, lines 12-16)

As there is no allegation or evidence in the record that either Respondent Cox & Dinkins or Respondent Rawls had any control over any real or personal property that interfered with the use or enjoyment of Appellant's property, this Court should affirm the circuit court's grants of directed verdict in favor of Respondent Cox & Dinkins and Respondent Rawls with regard to Appellant's nuisance cause of action. This Court should also affirm the circuit court because Appellant failed to present any evidence that Respondent Cox & Dinkins or Respondent Rawls engaged in any intermittent or periodic conduct that could constitute a continuing interference with Appellant's use and enjoyment of her property and because Appellant failed to demonstrate that she suffered any damage because of any conduct of Respondent Cox & Dinkins or Respondent Rawls.

## III. BECAUSE APPELLANT FAILED TO PRESENT TO THE JURY ANY EVIDENCE IN SUPPORT OF THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CAUSE OF ACTION AGAINST RESPONDENTS COX & DINKINS AND RAWLS, THE CIRCUIT COURT PROPERLY GRANTED DIRECTED VERDICT IN FAVOR OF THESE RESPONDENTS.

The tort of intentional infliction of emotional distress, also known as the tort of outrage, arises when "'[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another[.]'" *Ford v. Hutson*, 276 S.C. 157,

162, 276 S.E.2d 776, 778 (1981) (quoting RESTATEMENT (SECOND) OF TORTS § 46 (1965)). The South Carolina Supreme Court has further held as follows:

> "Specifically, in order to recover for the intentional infliction of emotional distress, a plaintiff must establish that (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct, [citations omitted]; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community,' [citations omitted]; (3) the actions of the defendant caused the plaintiff's emotional distress, [citations omitted]; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it."

*Id.* at 162, 276 S.E.2d at 778-79 (quoting *Vicnire v. Ford Motor Co.*, 401 A.2d 148, 154 (Me. 1979).

"The law limits claims of intentional infliction of emotional distress to egregious conduct toward a plaintiff proximately caused by a defendant." *Upchurch v. New York Times Co.*, 314 S.C. 531, 536, 431 S.E.2d 558, 561 (1993) (citing *Christensen v. Superior Court*, 54 Cal.3d 868, 905, 820 P.2d 181, 203, 2 Cal.Rptr.2d 79, 101 (1991)). "It is not enough that the conduct is intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." *Id.* (citing *Christensen*, 54 Cal.3d at 903, 820 P.2d at 202, 2 Cal.Rptr.2d at 100).

"[A] cause of action for intentional infliction of emotional distress carries a 'heightened burden of proof.'" *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 170, 708 S.E.2d 218, 224 (Ct. App. 2011) (quoting *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 356, 650 S.E.2d 68, 71 (2007)). "Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie

claim for damages resulting from a defendant's tortious conduct with mere bald assertions." *Hansson*, 374 S.C. at 358, 650 S.E.2d at 72.

"[T]he court must determine 'whether the defendant's conduct may reasonably be regarded' as meeting the requirements of *Ford v. Hutson* [, i.e.,] whether 'reasonable minds could differ as to whether [the] conduct was sufficiently 'outrageous' and 'whether [the] resulting emotional distress was sufficiently 'severe.'" *AJG Holdings LLC*, 392 S.C. at 172, 708 S.E.2d at 224 (quoting *Hansson*, 374 S.C. at 357-58, 650 S.E.2d at 71-72).

Accordingly "[t]he question of whether a defendant's conduct may be reasonably regarded as so extreme and outrageous as to allow recovery is a question for the court to determine in the first instance." *Butts v. AVX Corp.*, 292 S.C. 256, 262-63, 355 S.E.2d 876, 880 (Ct. App. 1987) (citing *Todd v. South Carolina Farm Bureau Mutual Insurance Co.*, 283 S.C. 155, 167, 321 S.E.2d 602, 609 (Ct. App. 1984)). "Initially . . . the court determines whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, and only where reasonable persons might differ is the question one for the jury." *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994) (citing *Holtzscheiter v. Thomson Newspapers, Inc.*, 306 S.C. 297, 301, 411 S.E.2d 664, 666-67 (1991)).

"[W]here physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious." *Hansson*, 374 S.C. at 357, 650 S.E.2d at 71 (citing *Ford*, 276 S.C. at 161, 276 S.E.2d at 778). Accordingly, "in order to prevail in a tort action alleging damages for purely mental anguish, the plaintiff must show both that the conduct on the part of the

defendant was 'extreme and outrageous,' and that the conduct caused distress of an 'extreme or severe nature.'" *Id.* (citing *Ford*, 276 S.C. at 161, 276 S.E.2d at 778).

After the presentation of Appellant's case-in-chief, The Honorable R. Lawton McIntosh directed a verdict in favor of Respondent Cox & Dinkins and Respondent Rawls as to Appellant's intentional infliction of emotional distress cause of action, (R. p. 437, lines 11-p. 441, line 7), after finding that:

> the alleged conduct complained of [Respondent Cox and Dinkins and Respondent Rawls] would not amount to the type of conduct that is envisioned by the cause of action . . . that they allegedly placed a rebar pin or pins on the plaintiff's property thereby depriving her of the alleged use of that property and allowing the other defendants to come onto her property and make her life miserable and cause a problem.

(R. p. 440, lines 2-10) Judge McIntosh also held that Appellant had failed to present to the jury any testimony or other evidence that any type of emotional distress had been proximately caused by any alleged conduct of either Respondent Cox & Dinkins or Respondent Rawls. (R. p. 440, lines 13-19) Judge McIntosh also based his ruling on Appellant's failure to introduce into the record any admissible testimony or evidence in support of the allegation that the Cox & Dinkins Plat is not correct. (R. p. 440, line 20-p. 441, line 4)

Appellant failed to present to the jury any evidence that Respondent Cox & Dinkins or Respondent Rawls by extreme and outrageous conduct intentionally or recklessly caused Appellant severe emotional distress. (*See* R. p. 298, line 13-p. 432, line 4) In fact, the only evidence presented during Appellant's case-in-chief regarding interactions between Appellant and Respondent Cox & Dinkins or Respondent Rawls concerned a meeting that Appellant had requested with Respondent Rawls, (R. p. 407, line 25-p. 408, line 8; *see also* pp. 182-86), at which Respondent Rawls had been

courteous, (R. p. 410, lines 1-3), and several telephone conversations with Respondent Rawls to set up that meeting, (R. p. 407, line 25-p. 408, line 8). Appellant never had any other conversations with any representative of Respondent Cox & Dinkins. (R. p. 410, lines 4-7)

Although Appellant alleged that, "if it had not been for [the Cox & Dinkins Plat] these issues would not have occurred and I would not have been suffering for the last 10 plus years [because t]hey legitimized a rebar that told these people that they had a legal right to come onto my property[,]" (R. p. 438, line 21-p. 439, line 2), Appellant also testified to having no personal knowledge of any surveying work completed by either Respondent Rawls or Respondent Cox & Dinkins in 2004, (R. p. 406, lines 8-17). Appellant further testified that she had never seen Respondent Rawls or any representative of Respondent Cox & Dinkins on her property, (R. p. 406, lines 8-17, p. 407, lines 7-9), or place any object on her property, (R. p. 407, lines 3-6) Moreover, Appellant did not introduce any admissible testimony or other evidence of any deficiencies in the plat prepared by Respondent Cox & Dinkins in 2004. (*See* R. p. 298, line 13-p. 432, line 4)

Furthermore, Appellant failed to introduce any evidence to support her contention that any alleged conduct proximately caused her distress of an extreme or severe nature. (*See id.*) Although Appellant testified that she suffered from a blood clot in her leg, (R. p. 393, lines 8-21), and anxiety attacks, (R. p. 399, lines 9-14), Appellant failed to present any evidence that any conduct of Respondent Cox & Dinkins or Respondent Rawls proximately caused these conditions. (*See* R. p. 298, line 13-p. 432, line 4)

As Respondent Cox & Dinkins' performance of a survey of property owned by Respondent Fair, for which Appellant had not been present, and the preparation of a resulting plat of that property, for which there is no evidence of any deficiency, cannot as a matter of law give rise to a cause of action for intentional infliction of emotional distress, this Court should affirm the circuit court's grants of directed verdict in favor of Respondent Cox & Dinkins and Respondent Rawls with regard to Appellant's intentional infliction of emotional distress cause of action. This Court should also affirm the circuit court because the record demonstrates that neither Respondent Cox & Dinkins nor Respondent Rawls engaged in any conduct directed at Appellant or that occurred in the presence of Appellant that could reasonably be regarded as so extreme and outrageous as to permit recovery. In addition, this Court should further affirm the circuit court because Appellant failed to introduce any evidence to support her contention that any conduct of Respondent Cox & Dinkins or Respondent Rawls proximately caused her distress of an extreme or severe nature.

## IV. BECAUSE APPELLANT FAILED TO PRESENT TO THE JURY ANY EVIDENCE IN SUPPORT OF THE SLANDER OF TITLE CAUSE OF ACTION AGAINST RESPONDENTS COX & DINKINS AND RAWLS, THE CIRCUIT COURT PROPERLY GRANTED DIRECTED VERDICT IN FAVOR OF THESE RESPONDENTS.

Slander of title is "'a false and malicious statement, oral or written, made in disparagement of a person's title to real or personal property, causing him injury.'" *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 18, 567 S.E.2d 881, 890 (Ct. App. 2002) (quoting 50 AM. JUR. 2D *Libel & Slander* § 548 (1995)). "[T]o maintain an action for slander of title in South Carolina, the plaintiff must establish: '(1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes

special damages (6) as a result of diminished value of the property in the eyes of third parties.'" *Id.* (quoting *Huff v. Jennings*, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct. App. 1995)).

"A publication is derogatory to the plaintiff's title if the publication disparages or diminishes the quality, condition, or value of the property." *Id.* at 150, 459 S.E.2d at 891 (citing 50 AM. JUR. 2D *Libel & Slander* § 551 (1995)). "In slander of title actions, the malice requirement may be satisfied by showing the publication was made in reckless or wanton disregard to the rights of another, or without legal justification." *Id.* "Special damages recoverable in a slander of title action are the pecuniary losses that result 'directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation.'" *Id.* at 150-51, 459 S.E.2d at 891-92 (quoting 50 AM. JUR. 2D *Libel & Slander* § 560; RESTATEMENT (SECOND) OF TORTS § 633 (1977)).

After the presentation of Appellant's case-in-chief, The Honorable R. Lawton McIntosh directed a verdict in favor of Respondent Cox & Dinkins and Respondent Rawls as to Appellant's slander of title cause of action after determining that Appellant had failed to present any evidence of malice or of a false publication. (R. p. 441, line 11-p. 444, line 3) Judge McIntosh further held that Appellant did not introduce any admissible testimony or other evidence of any deficiencies in the plat prepared by Respondent Cox & Dinkins. (R. p. 443, line 21-p. 444, line 3)

Appellant generally alleges that Respondent Cox & Dinkins and Respondent Rawls acted with malice by preparing and filing with the Lexington County Register of

Deeds the Cox & Dinkins Plat and that the plat has allowed others to assert claims to a portion of her property. (R. p. 442, line 12-p. 443, line 10) Appellant, however, did not introduce to the jury any testimony or evidence of any deficiencies in the plat prepared by Respondent Cox & Dinkins or that either Respondent Cox & Dinkins or Respondent Rawls filed the subject plat. (*See* R. p. 298, line 13-p. 432, line 4) Moreover, Appellant presented no evidence of any special pecuniary losses resulting from any conduct of either Respondent Cox & Dinkins or Respondent Rawls. (*See id.*)

In fact, the Cox & Dinkins Plat is consistent with the closing survey prepared for Appellant by Drafts Surveying, Inc. ("Closing Survey"). (R. p. 326, lines 10-17) The Cox & Dinkins Plat, for example, notes that Appellant's parcel fronts Macaw Lane for a distance of 69.86 feet, (R. p. 324, line 10-p. 325, line 10; *see also* R. p. 665), which varies in measurement from the Closing Survey and Appellant's deed by 0.01 feet, 0.12 inches, or less than 1/8 of an inch, (*compare* R. p. 323, line 24-p. 324, line 4, *with* R. p. 324, line 25-p. 325, line 10; *see also* R. p. 665, 678). The Cox & Dinkins Plat, like the Closing Survey, also describes the iron pins found at each corner of each parcel and fails to show a pin located approximately 15 feet onto Appellant's property. (R. p. 326, lines 18-21) As a result, Judge McIntosh specifically held that the "Cox and Dinkins plat has not been established to be improper." (R. p. 456, lines 3-4; *see also* R. p. 440, line 20-p. 441, line 4)

As Appellant did not introduce to the jury any testimony or other evidence of any falsehoods or deficiencies in the plat prepared by Respondent Cox & Dinkins, this Court should affirm the circuit court's grants of directed verdict in favor of Respondent Cox & Dinkins and Respondent Rawls with regard to Appellant's slander of title cause of action.

This Court should also affirm the trial court because Appellant presented no evidence of any special pecuniary losses resulting from any conduct of either Respondent Cox & Dinkins or Respondent Rawls.

## V. BECAUSE SOUTH CAROLINA CODE § 16-11-620 DOES NOT ESTABLISH A PRIVATE RIGHT OF ACTION AND APPELLANT FAILED TO PRESENT TO THE JURY ANY EVIDENCE IN SUPPORT OF THE CONTINUING CRIMINAL OR CIVIL TRESPASS CAUSES OF ACTION AGAINST RESPONDENTS COX & DINKINS AND RAWLS, THE CIRCUIT COURT PROPERLY GRANTED DIRECTED VERDICT IN FAVOR OF THESE RESPONDENTS.

In South Carolina, criminal trespass is governed by South Carolina Code § 16-11-620, which provides as follows:

> Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

S.C. CODE ANN. § 16-11-620 (1976).

"The primary consideration in deciding whether a private cause of action should be implied under a criminal statute is legislative intent." *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 66, 398 S.E.2d 687, 689 (1990) (finding that the language and form of the statute criminalizing the publication of the name of a victim of criminal sexual conduct does not purport to establish civil liability for violations and, therefore, does not establish a private right of action) (citing *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)).

A civil action for trespass is "an action to recover for an unlawful entry by another onto one's real property." *Babb v. Lee County Landfill SC, LLC*, 405 S.C. 129, 137 n.2, 747 S.E.2d 468, 472 n.2 (2013) (citing *Black's Law Dictionary* 1541 (8th ed. 1999)). "The essence of trespass is the unauthorized entry onto the land of another." *Ravan v. Greenville Cnty.*, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct. App. 1993) (citing *Snow v. City of Columbia*, 305 S.C. 544, 552, 409 S.E.2d 797, 802 (Ct. App. 1991); *Whitley v. Jones*, 238 N.C. 332, 332, 78 S.E.2d 147, 151 (1953) (citation omitted); 75 AM. JUR. 2D *Trespass* § 9 (1991)).

"South Carolina adheres to the traditional rule requiring an invasion by a physical, tangible thing for a trespass to exist[.]" *Babb*, 405 S.C. at 145, 747 S.E.2d at 476. "The traditional common law rule, the dimensional test, provides that a trespass only exists where the invasion of land occurs through a physical, tangible object. *Id.* at 146, 747 S.E.2d at 477 (citing *Adams v. Cleveland–Cliffs Iron Co.*, 237 Mich. App. 51, 51, 602 N.W.2d 215, 219 (1999)). Accordingly, "[t]o constitute an actionable trespass, the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion." *Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (1995) (citing *Snow*, 305 S.C. at 553, 409 S.E.2d at 802).

After the presentation of Appellant's case-in-chief, The Honorable R. Lawton McIntosh directed a verdict in favor of Respondent Cox & Dinkins and Respondent Rawls as to Appellant's continuing criminal and civil trespass causes of action after determining that (1) Appellant did not maintain a proper action for criminal trespass, (R. p. 432, lines 7-18), and (2) Appellant failed to present to the jury any testimony or

evidence that either Respondent Cox & Dinkins or Respondent Rawls entered Appellant's property or placed any object on Appellant's property, (R. p. 445, line 5-p. 446, line 8). Furthermore, Judge McIntosh determined that any action for trespass "would be barred by [the] statute of limitations because it occurred in 2004." (*Id.*)

**A. Continuing Criminal Trespass**

South Carolina Code § 16-11-620 criminalizes (1) the entry onto another's premises after a warning not to do so and (2) the refusal to leave immediately upon being so ordered. S.C. CODE ANN. § 16-11-620 (1976). The statute provides as punishment for a violation a fine of not more than two hundred dollars or imprisonment for not more than thirty days. *Id.* The statute does not provide for a private right of action. *See id.*

Appellant generally alleges that either Respondent Cox & Dinkins or Respondent Rawls must have entered onto her property in 2004 in order to complete the survey and resulting plat requested by Respondent Fair. Appellant further alleges that Respondent Cox & Dinkins or Respondent Rawls must have placed an iron pin on her property at that time.

Appellant, however, testified at trial to having no personal knowledge of any surveying work completed by Respondent Cox & Dinkins or Respondent Rawls in 2004. (R. p. 405, line 16-p. 406, line 17) Appellant also testified that she had never seen Respondent Rawls or any representative of Respondent Cox & Dinkins on her property. (R. p. 405, line 16-p. 406, line 17, p. 407, lines 7-9) Appellant further testified that she did not see any representative of Respondent Cox & Dinkins place any other object on her property. (R. p. 407, lines 3-6) In fact, Appellant testified at trial that she has no

personal knowledge regarding who may have placed the alleged pin or object on her property. (R. p. 416, lines 10-20)

Moreover, Appellant failed to present to the jury any testimony or evidence that Appellant had warned Respondent Cox & Dinkins or Respondent Rawls not to enter her property. (*See* R. p. 298, line 13-p. 432, line 4) In fact, the only evidence presented at trial regarding any interaction between Appellant and Respondent Cox & Dinkins or Respondent Rawls concerned a meeting that Appellant had requested with Respondent Rawls on March 25, 2011, and several telephone conversations involving Respondent Rawls to set up that meeting. (R. p. 407, line 25-p. 408, line 8; *see also* R. p. 182-86) Appellant admitted that she never had any other conversations with any representative from Respondent Cox & Dinkins. (R. p. 410, lines 4-7)

As the South Carolina statute governing criminal trespass does not create a private right of action and as Appellant failed to introduce at trial any testimony or evidence in support of a criminal trespass cause of action, this Court should affirm the circuit court's dismissal of Appellant's criminal trespass cause of action against Respondent Cox & Dinkins and Respondent Rawls.

**B. Continuing Civil Trespass**

As discussed above, Appellant generally alleges that either Respondent Cox & Dinkins or Respondent Rawls must have entered onto her property at sometime in 2004 and placed an iron pin on her property at that time. (*See* R. p. 184) At trial, however, Appellant testified to having no personal knowledge of any surveying work completed by either Respondent Cox & Dinkins or Respondent Rawls in 2004. (R. p. 405, line 16-p. 406, line 17) Appellant further testified that she had not seen Respondent Rawls or any

representative of Respondent Cox & Dinkins on her property. (R. p. 405, line 16-p. 406, line 17, p. 407, lines 7-9) Appellant also testified that she did not see any representative of Respondent Cox & Dinkins place an object on her property. (R. p. 407, lines 3-6) Appellant further admits that an adjoining property owner would have as much right as she to any pin marking the mutual property boundary line. (R. p. 412, line 17-p. 413, line 3)

Moreover, Appellant failed to introduce any evidence or testimony that either Respondent Cox & Dinkins or Respondent Rawls made an intentional, unauthorized entry onto her property. (*See* R. p. 298, line 13-p. 432, line 4) Furthermore, Appellant failed to introduce any evidence or testimony regarding any damages that would have been caused by such an intrusion. (*See id.*) In fact, Appellant testified at trial that she had not witnessed either Respondent Cox & Dinkins or Respondent Rawls damage any flora on her property. (R. p. 412, lines 12-16)

**C. Statute of Limitations**

South Carolina law provides that an action for trespass or damage to real property must be brought within three years of when the action accrues. S.C. CODE ANN. § 15-3-530(3) (1976). South Carolina courts have adopted the discovery rule to determine when a cause of action for trespass accrues. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). Under the discovery rule, the statute of limitations "runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Id.* (citing *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993)). The exercise of reasonable diligence means simply that "the injured party must act with some promptness where the facts and

circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." *Id.* at 363-64, 468 S.E.2d at 647 (citing *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)).

The statute of limitations is not delayed until a claimant is "actually able to investigate her case, discover a cause of action existed, and determine who or what caused her injury." *Wiggins v. Edwards*, 314 S.C.126, 128, 442 S.E.2d 169, 178 (1994). "The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer." *Tollison v. B & J Machinery Co., Inc.*, 812 F. Supp. 618, 620 (D.S.C. 1993).

As Appellant did not institute this action against Respondent Cox & Dinkins and Respondent Rawls until June, 2011,[12] any trespass cause of action that accrued prior to June, 2008, is barred by South Carolina law. At trial, the sole evidence that either Respondent Cox & Dinkins or Respondent Rawls had been near Appellant's property is that Respondent Cox & Dinkins issued a plat memorializing a survey of property owned by Respondent Fair. (*See* R. p. 298, line 13-p. 432, line 4)

Appellant first contacted the police to accuse Respondent Reibold of trespassing on her property in 2006. (R. p. 518, lines 11-24). The accusation resulted in a discussion amongst Respondents Reibold, Respondents Hooker, and Respondent Fair, which was witnessed by Appellant. (*See* R. p. 518, line 25-p. 520, line 14, p. 537, lines 5-16) Appellant also accused Respondent Hooker of trespassing on her property in 2007. (R. p. 378, lines 10-13, p. 467, lines 7-23)

[12] *See* supra note 7.

As Appellant did not assert a trespass cause of action against Respondent Cox & Dinkins or Respondent Rawls until almost seven (7) years after these Respondents issued the Cox & Dinkins Plat on June 30, 2004, this Court should affirm the circuit court's determination that the assertion by Appellant of any trespass cause of action against these respondents is be barred by the applicable statute of limitations.

## VI. BECAUSE APPELLANT FAILED TIMELY TO ALLEGE A CIVIL CONSPIRACY CAUSE OF ACTION AGAINST RESPONDENTS COX & DINKINS AND RAWLS AND FAILED TO PRESENT TO THE JURY ANY EVIDENCE IN SUPPORT OF THE CAUSE OF ACTION, THE CIRCUIT COURT PROPERLY GRANTED A DIRECTED VERDICT IN FAVOR OF THESE RESPONDENTS.

"The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Benedict College v. National Credit Systems, Inc.*, 400 S.C. 538, 545, 735 S.E.2d 518, 521 (Ct. App. 2012) (citing *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009)). "An action for civil conspiracy is an action at law, and the trial judge's findings will be upheld on appeal unless they are without evidentiary support."*Gynecology Clinic, Inc. v. Cloer*, 334 S.C. 555, 556, 514 S.E.2d 592, 593-94 (1999) (citing *Future Group II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45 (1996)).

"To be actionable, . . . a conspiracy's 'primary purpose or object' must be 'to injure the plaintiff.'" *Benedict College*, 400 S.C. at 545, 735 S.E.2d at 522 (citing *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986)). "[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Island Car Wash, Inc. v. Norris*, 292 S.C.

595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987). "'Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.'" *Hackworth*, 385 S.C. at 118, 682 S.E.2d at 876 (quoting *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981)).

"Unlike other torts, an action for civil conspiracy requires the tortious conduct in question to cause the plaintiff special damage." *Benedict College*, 400 S.C. at 546, 735 S.E.2d at 522 (citing *Hackworth*, 385 S.C. at 115, 682 S.E.2d at 874). In fact, "special damages must 'be specifically stated' to avoid surprise to the other party." *Id.* at 548, 735 S.E.2d at 523 (quoting *Preferred Sav. Bank, Inc. v. Elkholy*, 303 S.C. 95, 99, 399 S.E.2d 19, 21 (Ct. App. 1990)).

"[S]pecial damages 'are the natural, but not the necessary or usual, consequence of the' tortfeasor's conduct." *Id.* at 546, 735 S.E.2d at 522 (quoting *Hackworth*, 385 S.C. at 116-17, 682 S.E.2d at 875). "[D]ismissal of a claim for civil conspiracy is appropriate when 'a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim.'" *Id.* (quoting *Hackworth*, 385 S.C. at 117, 682 S.E.2d at 875).

After the presentation of Appellant's case-in-chief, The Honorable R. Lawton McIntosh directed a verdict in favor of Respondent Cox & Dinkins and Respondent Rawls as to Appellant's civil conspiracy cause of action after determining that Appellant had failed to present any evidence that Respondent Cox & Dinkins and Respondent

Rawls "did anything other than to prepare a plat [or that] there has been a deviation of the standards that is required of surveyors." (R. p. 446, lines 9-15)

Appellant generally alleges that Respondent Cox & Dinkins and Respondent Rawls conspired with others to harm Appellant by preparing the Cox & Dinkins Plat. (R. p. 186) Appellant, however, did not introduce to the jury any testimony or evidence of any deficiencies in the plat prepared by Respondent Cox & Dinkins. (*See* R. p. 298, line 13-p. 432, line 4) In addition, Appellant did not allege or introduce to the jury any testimony or evidence of any acts in support of the alleged conspiracy that are not the same as those relied on as the tortuous act or actionable wrong. (*Id.*) Moreover, Appellant presented no evidence at trial of any special damages resulting from the preparation of the Cox & Dinkins Plat. (*Id.*)

The only evidence presented at trial showed that the Cox & Dinkins Plat is consistent with the closing survey prepared for Appellant by Drafts Surveying, Inc. ("Closing Survey"). (R. p. 326, lines 10-17) As discussed above, the Cox & Dinkins Plat notes that Appellant's parcel fronts Macaw Lane for a distance of 69.86 feet, (R. p. 324, line 10-p. 325, line 10; *see also* R. p. 665), which varies in measurement from the Closing Survey and Appellant's deed by 0.01 feet, 0.12 inches, or less than 1/8 of an inch. (*compare* R. p. 323, line 24-p. 324, line 4, *with* R. p. 324, line 25-p. 325, line 10; *see also* R. p. 665, 678). The Cox & Dinkins Plat, like the Closing Survey, also describes the iron pins found at each corner of each parcel and fails to show a pin located approximately 15 feet onto Appellant's property. (R. p. 326, lines 18-21) As a result, Judge McIntosh specifically held that the "Cox and Dinkins plat has not been established to be improper." (R. p. 456, lines 3-4; *see also* R. p. 440, line 20-p. 441, line 4)

Appellant did not present at trial any evidence that Respondent Rawls or Respondent Cox & Dinkins had ever interacted with Respondents Hooker or Riebold. (*See* R. p. 298, line 13-p. 432, line 4) Appellant also did not present any testimony or evidence of any interactions including Respondent Rawls, Respondent Cox & Dinkins, and Respondent Fair. (*See id.*) Moreover, Appellant testified that she has no personal knowledge of any surveying work completed by either Respondent Rawls or Respondent Cox & Dinkins in 2004, (R. p. 405, line 16-p. 406, line 17), and that she had never seen Respondent Rawls or any representative of Respondent Cox & Dinkins on her property. (R. p. 405, line 16-p. 406, line 17, p. 407, lines 7-9)

As Appellant did not present to the jury any testimony or other evidence of any deficiencies in the plat prepared by Respondent Cox & Dinkins, nor allege or introduce to the jury any testimony or evidence of any actions taken in support of the alleged conspiracy, nor present to the jury evidence of any special damages resulting from the preparation of the Cox & Dinkins Plat, this Court should affirm the circuit court's grants of directed verdict in favor of Respondent Cox & Dinkins and Respondent Rawls with regard to Appellant's civil conspiracy cause of action.

## VII. BECAUSE ALL PARTIES CONSENTED TO DISMISSAL OF CERTAIN WITNESSES AFTER EXAMINATION OF THE WITNESSES HAD BEEN CONCLUDED BY ALL THE PARTIES TO THE ACTION, THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ALLOW APPELLANT TO RECALL CERTAIN WITNESSES

The South Carolina Rules of Evidence provide that the trial court "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect

witnesses from harassment or undue embarrassment." SCRE 611(a). The rules further provide that "[a]fter the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court." SCRE 611(d).

Appellant appeals the trial court's refusal to recall Master Deputy Anthony A. Creech ("Officer Creech") and James Drafts ("Drafts") after the examination of the witnesses had been concluded by all the parties to the action, after Appellant had re-examined the witnesses, and after the witnesses had been released by the consent of the parties.

Officer Creech and Drafts both testified on the first day of the three day trial. (R. p. 298, line 13-p. 338, line 25)[13] Appellant examined and re-examined Officer Creech regarding, inter alia, the location of where a particular iron pin had been located during his visit to the property on December 15, 2010. (R. p. 307, lines 5-20, p. 311, line 19-p. 314, line 2) In response to Appellant's examination, Officer Creech testified that he could not recall where that particular iron pin had been located during his visit to the property on December 15, 2010, (R. p. 307, lines 5-20), but that "[i]f I was physically standing in your yard right now I could show you where it was" (R. p. 308, lines 4-5). After being shown a photograph of the property, Officer Creech further testified that ". . . I cannot look at that picture and tell you." (R. p. 309, line 2)

After each party had examined Officer Creech, the Court inquired whether Officer Creech could be excused, to which Appellant responded in the affirmative. (R. p. 314, lines 9-10) After Appellant raised another evidentiary issue, the Court again inquired

[13] *See* supra note 7. The Record on Appeal does not include the immediately following Trial Transcript pp. 120-23.

whether Officer Creech could be excused, to which Appellant responded "I said yes." (R. p. 314, lines 20-23)

Appellant then called James Drafts as her next witness. (R. p. 314, line 24-p. 315, line 8) Appellant examined and re-examined Drafts regarding, inter alia, various surveys and the location of iron pins described on the plats and surveys. (R. p. 315, line 9-p. 321, line 9, p. 328, line 20-p.336, line 19) After all parties had examined Drafts, the Court inquired whether Drafts could be excused. (R. p. 338, line 23) Again, Appellant responded in the affirmative. (R. p. 338, lines 23-24)

On the next day, Appellant sought to recall Officer Creech and Drafts because "I have some information I didn't have yesterday that Officer Creech said that he could point out the location of the black hose if I had a picture and I have that now. And there's some discrepancies from Mr. Drafts testimony." (R. p. 340, lines 5-10) After considering objections from counsel for Respondents Riebold, Respondents Hooker, Respondent Cox & Dinkins, and Respondent Rawls, Judge McIntosh took Appellant's motion under advisement. (R. p. 341, line 5-p. 342, line 13) In response, Appellant conceded "I understand it's at the discretion of the Court." (R. p. 342, lines 12-13) At the end of Appellant's case in chief, Judge McIntosh denied Appellant's motion to recall Officer Creech and Mr. Drafts. (R. p. 431, lines 9-15)

As Judge McIntosh exercised sound discretion in not allowing Appellant to recall witnesses to re-address testimony and issues already addressed during Appellants direct examination and re-direct examination after the witnesses had been released by the consent of the parties, this Court should affirm that Judge McIntosh did not abuse his discretion and affirm the circuit court's refusal to allow Appellant to re-call the witnesses.

## VIII. BECAUSE APPELLANT DID NOT PROFFER HERSELF NOR QUALIFY HERSELF AS AN EXPERT IN THE FIELD OF PROFESSIONAL LAND SURVEYING, THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING CERTAIN OPINION TESTIMONY PROFFERED BY APPELLANT

The South Carolina Rules of Evidence provide as follows:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.
>
> * * *
>
> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

SCRE 701, 702.

"To qualify as an expert, a person must have acquired by study or practical experience such special knowledge of the subject matter of his or her testimony as would enable the person to give guidance and assistance to the jury in solving a problem about which the jury's good judgment and average knowledge is inadequate." *Honea v. Prior*, 295 S.C. 526, 530, 369 S.E.2d 846, 849 (Ct. App. 1988) (citing *Botehlo v. Bycura*, 282 S.C. 578, 585-86, 320 S.E.2d 59, 64 (Ct. App. 1984)).

"The qualification of a witness as an expert and admissibility of his testimony are matters largely within the discretion of the trial court." *Lucas v. Sara Lee Corp.*, 307 S.C. 495, 501, 415 S.E.2d 837, 841 (Ct. App. 1992) (citing *Honea*, 295 S.C. at 530, 369 S.E.2d at 849; *Bonaparte v. Floyd*, 291 S.C. 427, 433, 354 S.E.2d 40, 44 (Ct. App. 1987)). Accordingly, "[t]he trial judge's determination regarding a witness' qualifications to testify as an expert will not be disturbed on appeal, absent a showing of an abuse of

discretion. *Honea*, 295 S.C. at 530, 369 S.E.2d at 849 (citing *McCown v. Muldrow*, 91 S.C. 523, 523, 74 S.E. 386, 392 (1912)).

Appellant appeals the trial court's exclusion of certain opinions proffered by Appellant during her direct narrative testimony regarding her interpretation of certain aspects of various land surveys and plats introduced as evidence. At trial, The Honorable R. Lawton McIntosh excluded this opinion testimony on the grounds that Appellant failed to establish that she had any particular expertise to be able to testify as to what the various plats and surveys entered into evidence showed after finding that interpretation of certain aspects of the documents requires specialized knowledge. (R. p. 361, line 18-p. 362, line 12, p. 364, line 1-p. 365, line 6) Although Judge McIntosh provided Appellant with an opportunity to establish her qualifications, (R. p. 365, line 4-6), Appellant never proffered herself as an expert nor laid a foundation with testimony or other evidence to support any such qualifications, (*See* R. p. 348, line 14-p. 431, line 15)

Appellant's witness, James Drafts, however, did have experience with preparing and interpreting surveys and plats, (*see generally* R. p. 315, lines 10-17), and offered testimony interpreting the various surveys and plats entered into evidence, (*see generally* R. p. 322, line 18-p. 327, line 21). Mr. Drafts is also familiar with the regulations regarding the manner in which plats must be prepared. (R. p. 327, lines 11-21) Accordingly, Appellant could have proffered Mr. Drafts as an expert witness and elicited from him opinion testimony regarding the plats and surveys.

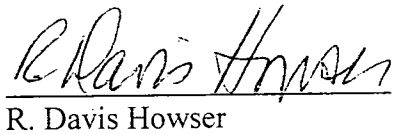
As Judge McIntosh exercised sound discretion in excluding the opinions proffered by Appellant because Appellant did not proffer herself as an expert nor establish that she had any particular expertise regarding land surveying and the interpretation of plats and

surveys, this Court should affirm that Judge McIntosh did not abuse the discretion provided a trial judge and affirm the circuit court's exclusion of the testimony. Furthermore, as Appellant could have proffered James Drafts as an expert to testify regarding the plats and surveys, this Court should also affirm the circuit court on the grounds that Appellant suffered no prejudice from the exclusion.

## CONCLUSION

For the reasons discussed above, this Court should fully affirm the circuit court's grants of directed verdict on behalf of Respondent Cox & Dinkins, Inc., and Respondent Donald "Don" Rawls and the circuit court's rulings on the aforementioned evidentiary matters.

Respectfully submitted,



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