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FORM 4 ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE CASE NUMBER 2014 CP 32 00461

Melissa McDaniel, et al

JOLENE J. MARCHANT and LARRY MARCHANT, SR. RECEIVED NOV 14 2016 SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court Attorney for: Plaintiff Defendant Self-Represented Litigant

DISPOSITION TYPE (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:

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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:

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk: The motion for reconsideration of my order of August 12, 2016 is denied.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Special Referee Judge Code Date 9-22-16

For Clerk of Court Office Use Only

This judgment was entered on 10/13/2016, and a copy mailed first class or placed in the appropriate attorney's box on 10/14/2016, to attorneys of record or to parties (when appearing pro se) as follows:

James R. Davis

ATTORNEY(S) FOR THE PLAINTIFF(S)

Larry C. Marchant, Jr.

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg / kr

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

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ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Melissa J. McDaniel,)
John F. McDaniel, III, Tara M. Dickerson)
and Brandi M. Augustine,)

CIVIL ACTION NO.: 2014-CP-32-00461

Plaintiffs,)

vs.)

Jolene J. Marchant and)
Larry C. Marchant, Sr.,)

Defendants.)

ORDER

RECEIVED

NOV 14 2016

SC Court of Appeals

BETH A. CARPISG
CLERK OF COURT
LEXINGTON SC

2016 OCT 13 AM 10:25

JP
FILED

This Order is being entered in response to Defendants' Motion to Reconsider dated August 22, 2016 and filed August 22, 2016. This Court has reviewed the Defendants' Motion as well as Plaintiffs' Response to Defendants' Motion to Reconsider. I have also considered my notes from the trial, exhibits admitted into evidence and arguments of counsel in this matter and I find that the Motion to Reconsider should be denied.

Defendants', in their Motion, raised an issue that the granted prescriptive easement will prohibit Defendants from having vehicular access to the rear of their property and that not being equitable as to the parties in this action. I find that there is not substantial evidence supporting this position. The offered testimony by Mrs. Marchant on this issue was that the City of West Columbia or Lexington County required a five (5') foot setback area on one side of the house and a ten (10') foot setback area on the other side of the house. She then indicated that the east side of the house did not have five (5') feet lying between the house and the property line but there was ten (10') feet between the house and the McDaniel property line and that because the four and nine-tenths (4.9') foot prescriptive easement area was granted, she could not get legal

access to the back of her property unless it was on the McDaniel side. Defendants' Exhibit 2 shows that the Marchants house on the subject property and shows an area of ten and one-half (10.5') foot on the eastern side instead of five (5') feet and on the McDaniel side, a twenty (20') foot to twenty-five (25') foot width between the McDaniel and Marchant properties. No testimony was presented by the Defendants as to the necessary width of the proposed driveway to the rear of the property. Furthermore, Defendants presented no ordinance or statute indicating such regulation by the City or County. Also, the Defendants have owned the property since 2005 and presented no evidence that they attempted to establish a driveway on the McDaniels' side of their property. Plaintiffs' Exhibits 7 and 8 shows a steep slope on the McDaniels' side of the Marchant property and the Plaintiffs would ask the Court to make judicial notice of the slope which shows the difficulties in creating a driveway on the McDaniel side because of the slope.

Defendants further argue in the Motion to Reconsider that Mrs. Marchant did not testify that she knew of the gravel driveway prior to the Marchants purchase of the property in 2005. I find that the evidence in the case indicates otherwise in that Mrs. Marchant testified that prior to the purchase of the property, she did see "a gravel and brick driveway there; it may have been a path where cars went by back through there; and I could see that it could possibly be one next to their house; I have seen vehicles back there at the back door; this is before we bought the house." She acknowledged there was a fence on the property line between McDaniel and Marchant and she knew at the time she walked the property with the person from whom they bought the property.

Defendants further argue in their Motion that there was not evidence supporting the use and location of the driveway by the Plaintiffs or their predecessors-in-title for time period of 1998-2011 and that there was expressed or implied permission only as to the use of the property by the Plaintiffs, where the prescriptive easement was located. The Order ending this case established, by
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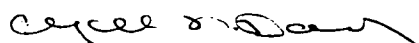
clear and convincing evidence, that the easement in question had been used since the late 1960's until 2013 and there had not been any overt action by the Defendants or their predecessors-in-title showing their disagreement with the use of the driveway by the Plaintiffs; this being a period of approximately 44 years.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendants' Motion to Reconsider is hereby denied and reaffirming the original Order, a copy of this Order with Exhibit "A" attached shall be filed with the Register of Deeds Office for Lexington County.

IT IS SO ORDERED

CD Order 5
Date: November, 2016

Lexington, South Carolina


The Honorable Clyde N. Davis
Special Referee Judge for the
Eleventh Judicial Circuit

BETH A. CARRING
CLERK OF COURT
LEXINGTON SC

2016 OCT 13 AM 10:25

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