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STATE OF SOUTH CAROLINA, )

) THE SOUTH CAROLINA COURT OF APPEALS

TAIWAN R. SCOTT. et al., )

CASE NO: 2016-00245

) Respondent, )

) vs. )

) RESPONDENT'S INITIAL BRIEFING  
) RESPONSE

) RONALD E. FORD , SONYA M. FORD )

) Appellants, )

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JAN 12 2017

SC Court of Appeals

INITIAL BRIEF OF RESPONDENT

TAIWAN R. SCOTT

5 CANDY DOLL BLUFF

HILTON HEAD ISLAND SC 29928

843-290-0868

PRO SE' RESPONDENT

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3. Attorney Wiseman Letter

Argument

- I. THE CIRCUIT COURT DID NOT ERR, NOR CONTRADICT THE ESTABLISHED LAW OF SOUTH CAROLINA, IN AFFIRMING THE DEEDED APPELLANTS' PREDECESSOR IN TITLE, FRED CHISOLM IN THE YEAR 1979 ESTABLISHED A 30' ACCESS EASEMENT AS PART OF A PLATTED SUBDIVISION OF PROPERTY LOCATED IN BEAUFORT COUNTY
- II. THE CIRCUIT COURT DID NOT ERR, NOR CONTRADICT THE ESTABLISHED LAW OF SOUTH CAROLINA, IN AFFIRMING THE DEEDED APPELLANTS' PREDECESSOR IN TITLE, FRED CHISOLM IN THE YEAR 1979 ESTABLISHED A 30' ACCESS EASEMENT AS PART OF A PLATTED SUBDIVISION OF PROPERTY LOCATED IN BEAUFORT COUNTY

## TABLE OF AUTHORITIES

### CASES & STATUES

The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury. Slear v. Hanna, 329 S.C. 407, 496 S.E.2d 633 (1998); Pittman v. Lowther, 355 S.C. 536, 586 S.E.2d 149 (Ct. App. 2003); Revis v. Barrett, 321 S.C. 206, 467 S.E.2d 460 (Ct. App. 1996); Smith v. Commissioners of Pub. Works, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994); see also Jowers v. Hornsby, 292 S.C. 549, 357 S.E.2d 710 (1987) (decision of trier of fact as to whether or not easement exists will be reviewed by Supreme Court as an action at law); Hartley v. John Wesley United Methodist Church, 355 S.C. 145, 584 S.E.2d 386 (Ct. App. 2003) (determination of existence of easement is action at law; establishing existence of easement is question of fact in law action). In an action at law tried without a jury, the judge's findings of fact will not be disturbed on appeal unless there is no evidence to support the judge's finding. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

"The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury." Hardy v. Aiken, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) (citation and quotation marks omitted). "In a law case tried by the judge without a jury, this court reviews for errors of law and reviews factual findings only for evidence which reasonably supports the court's

findings." *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. App. 1998). "However, the determination of the scope of the easement is a question in equity." *Hardy*, 369 S.C. at 165, 631 S.E.2d at 541. On appeal in an action in equity, the appellate court may find facts in accordance with its views of the preponderance of the evidence. *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). Thus, this court may reverse a factual finding by the trial court in such cases when the appellant satisfies us the finding is against the greater weight of the evidence. *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004). This broad scope of review does not require the appellate court to disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000). Furthermore, the appellant is not relieved of the burden of convincing this court the trial court committed error in its findings. *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001).

## STATEMENT OF ISSUES ON APPEAL

1. THE TRAIL JUDGE DID NOT ERR IN THE RULING WHEREAS, THE APPELLANT'S PREDECESSOR IN TITLE ESTABLISHED THE 30' EASEMENT IN THE DEED
2. THE TRAIL JUDGE DID NOT ERR IN THE RULING WHEREAS, THE APPELLANT'S PREDECESSOR IN TITLE ESTABLISHED THE 30'EASEMENT IN THE DEED
3. THE TRAIL JUDGE DID NOT ERR IN THE RULING WHEREAS, THE APPELLANT'S PREDECESSOR IN TITLE ESTABLISHED THE 30'EASEMENT IN THE DEED

## STATEMENT OF THE CASE

On December 12, 2013 I received a call from the tenant living at 41 Oakview Road..(ie subject property) stating that Mrs. Ford and gentleman were walking throughout the front yard with equipment which appeared to be for surveying. When I came to the lot I observed the two of them walking throughout the yard. I inquired, and Mrs. Ford stated that she was planning on putting up a fence and that that gentleman was a contractor. I then proceeded to advice her that it would be in her best interest not to erect the fence until we had a surveyor to come out and flag the property lines and the easement. I then told her that I had arleady ordered a survey and it would be in both of our, best interest, to see the markers prior to any work being done. Mrs. Ford then questioned me regarding the easement. I stated that there is a 30' access easement encombering our lots which accesses the remaining two lots. She seemed surprised, so I recommended for her to look at the legal description of her lot and she would see that it makes reference to the plat and page book for the easement. I then stated that all four deeds fot the lots are written identical. I told her that I did have a copy of the plat but I would need to get, so I left.

I received a call from Mrs. Ford about a hour later asking for me to come back to her house to discuss the easement. When I arrived I was met by her mother and sister and I was questioned about the easement. I explained to them that when the properties were originally sub-divided, the county insured that they would not be land locked by requiring the 30' easement. That way everyone would always have a legal access to their properties. Mrs. Ford and her mom both stated that they did not believe that a easement exist and they were not going to leave one open.

On December 20, 2013 the surveyor had his flags and stakes located throughout the property showing the property lines and easement. As I drove up I noticed Mrs. Ford's contractor in the process of putting the fence up in the easement and over the property line. When I questioned

Mrs. Ford about honoring the stakes, her response was that she did not trust the people who placed the markers and that her mother stated that the stakes were wrong. I requested for her not to allow her contractor to continue to erect the fence until we, at the very least, get the sealed surveyors plat in hand. I also suggested that if she did not trust the licensed agent I hired, to feel free to hire someone she trusted. Mrs. Ford just totally disregarded my request. She stated that she contacted the county and they told her that there was not an easement located on her property. I advised her to speak with an attorney.

On January 20, 2014 Attorney Wiseman sent Mr. and Mrs. Ford a certified letter which included a signed and sealed survey of the property showing the encroachments. Please see attached letter from Atty Wisemann. Around February 1, 2014 I went to Mrs Ford's house and questioned her about the letter. She stated that she had seen the noticed at the post office but, she never signed for the package. I then stated that the letter was also sent via regular mail. She stated that she does not receive mail at her home. On February 5, 2014 I hand delivered another copy of the letter and survey to her house. The fence has still not been removed.

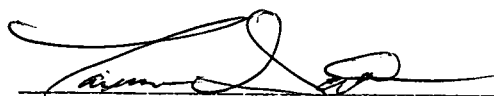
#### STATEMENT OF THE FACT

PREDECESSOR IN TITLE, FRED CHISOLM IN THE YEAR 1979 ESTABLISHED A 30' ACCESS EASEMENT AS PART OF A PLATTED SUBDIVISION OF PROPERTY LOCATED IN BEAUFORT COUNTY

#### CONCLUSION

AS EXPALINED MORE FULLY ABOVE, THIS COURT SHOULD AFFIRM THE CIRCUIT COURT'S DECISION AS THE DECISION IS SUPPORTED BY SUSTANTIAL FACTS AND EVIDENCE IN THE RECORD, THE CIRCUIT COURT JUDGE DID NOT MAKE ANY ERRORS OF LAW, AND THE CIRCUIT COURT JUDGE'S DECISION IS NOT CHARACTERIZED BY AN ABUSE OF DISCRETION.

RESPECTFULLY SUBMITTED,



TAIWAN SCOTT

1-10-17

DATE

STATE OF SOUTH CAROLINA, )  
)

THE SOUTH CAROLINA COURT OF APPEALS

TAIWAN R. SCOTT. et al., )  
)  
Respondent, )

CASE NO: 2016-000245

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)

ANSWER BRIEF  
BY RESPONDENT

RONALD E. FORD , SONYA M. FORD )  
Appellants, )

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JAN 12 2017

SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing, BRIEF BY RESPONDENT in connection with the above referenced case by mailing a copy of the same by U.S Mail, Postage Prepaid, to the following address:

RONALD E. FORD  
49 OAKVIEW ROAD  
Hilton Head Island S.C. 29926

  
\_\_\_\_\_

1-10-17

TAIWAN R. SCOTT. et al.

DATE

5 CANDY DOLL BLUFF HILTON HEAD ISLAND, SC 29928 843-290-0868

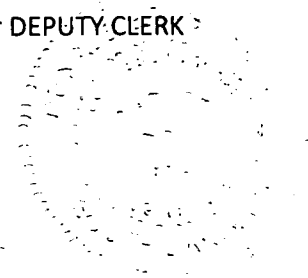
STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Sworn to or affirmed and signed  
before me on 1/10/17

  
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1/10/17

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DATE



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I certify that I have served a copy of the foregoing, BRIEF BY RESPONDENT in connection with the above referenced case by mailing a copy of the same by U.S Mail, Postage Prepaid, to the following address:

SONYA M. FORD  
 49 OAKVIEW ROAD  
 Hilton Head Island S.C. 29926



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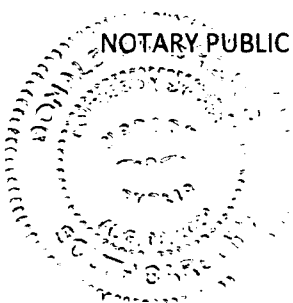
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1/10/17

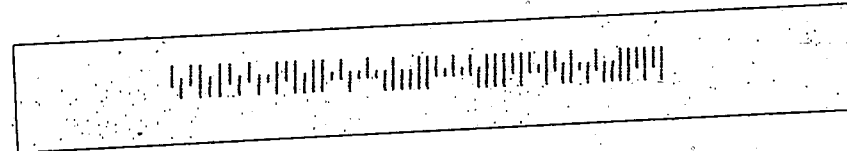
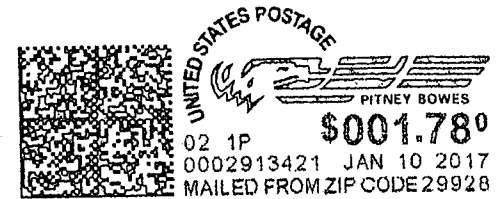
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DATE



TAIWAN SCOTT  
5 Candy Doll Bluff  
Hilton Head Island, SC

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S.C. Court of Appeals  
ATT: Jenny Abbott Kitchings  
Clerk of Court

P.O. Box 11629

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