

22699

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master in Equity

Civil Action No. 2012-CP-08-3013
Case No. 2012-CP-08-3013

RECEIVED
AUG 22 2016
SC Court of Appeals

Cynthia Jacqueline Jackson Mills,

Appellant,

v.

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

Respondents.

RECORD ON APPEAL

Mary Lee Hutson, Esq.
Inglese & Associates, LLC
105 Wappoo Creek Drive, Suite 1A
Charleston, South Carolina 29412
(843) 277-9785
Attorneys for Appellant

Patrick R. Watts, Esq.
Post Office Box 2046
Summerville, South Carolina 29484
(843) 851-7050
Attorney for Respondents

INDEX

Order from April 27, 2015	1
Order from September 8, 2015	8
Complaint.....	18
Answer & Counterclaim	26
Reply	31
Plaintiff's Motion for Summary Judgment.....	33
Defendant's Return to Plaintiff's Motion for Summary Judgment	43
Motion to Reconsider.....	50
Motion for Summary Judgment Transcript.....	63
Trial Transcript Volume I	73
Trial Transcript Volume II.....	120
Motion to Reconsider Transcript	132
Plaintiff's Exhibits	
1 – Expert Resume	143
3 – 1923 Deed & Plat.....	145
4 – 1931 Deed to Clark	148
5 – 1934 Deed to J.W. Adkins	150
6 – 1935 Deed to Fred Jackson	152
7A – 1935 Deed to Rubin Jackson.....	154
7B – Deed to Mullinax.....	156
7C – Will of Rubin Jackson & Deeds to Henry Jackson & Janet Hudson	158
7D – 2011 Plat	173
8.1 – 1969 Deed from Annie Jackson to John Jackson.....	174
8.2 – Will of J. Jackson to J. Mills.....	178
8.3 – Deed for Heirs of Bessie J. Fiddie	181
9 – Tax Records	185
10 – 2008 Court Order	197
11 – 2007 GIS Showing Easement	201
12 – 2005 Proposed Plat by Ashley Surveying.....	203
14 – 2006 Complaint.....	204

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master in Equity

Civil Action No. 2012-CP-08-3013
Case No. 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills, Appellant,

v.

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

RECORD ON APPEAL

Mary Lee Hutson, Esq.
Inglese & Associates, LLC
105 Wappoo Creek Drive, Suite 1A
Charleston, South Carolina 29412
(843) 277-9785
Attorneys for Appellant

Patrick R. Watts, Esq.
Post Office Box 2046
Summerville, South Carolina 29484
(843) 851-7050
Attorney for Respondents

INDEX

Order from April 27, 2015	1
Order from September 8, 2015	8
Complaint.....	18
Answer & Counterclaim	26
Reply	31
Plaintiff's Motion for Summary Judgment.....	33
Defendant's Return to Plaintiff's Motion for Summary Judgment	43
Motion to Reconsider.....	50
Motion for Summary Judgment Transcript.....	63
Trial Transcript Volume I	73
Trial Transcript Volume II.....	120
Motion to Reconsider Transcript	132
Plaintiff's Exhibits	
1 – Expert Resume	143
3 – 1923 Deed & Plat.....	145
4 – 1931 Deed to Clark	148
5 – 1934 Deed to J.W. Adkins	150
6 – 1935 Deed to Fred Jackson	152
7A – 1935 Deed to Rubin Jackson.....	154
7B –Deed to Mullinax.....	156
7C – Will of Rubin Jackson & Deeds to Henry Jackson & Janet Hudson	158
7D – 2011 Plat	173
8.1 – 1969 Deed from Annie Jackson to John Jackson.....	174
8.2 – Will of J. Jackson to J. Mills.....	178
8.3 – Deed for Heirs of Bessie J. Fiddie	181
9 – Tax Records	185
10 – 2008 Court Order	197
11 – 2007 GIS Showing Easement	201
12 – 2005 Proposed Plat by Ashley Surveying.....	203
14 – 2006 Complaint.....	204

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills,

Plaintiff,

vs.

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

Defendants.

FINAL ORDER

CLERK OF COURT
BERKELEY COUNTY, SC

2015 APR 27 PM 2:29

FILED

This Court acquired jurisdiction of this case by Consent Order of Reference enrolled May 20, 2013.

This Court conducted the trial on the merits of this case on March 30 and 31, 2015. The Plaintiff appeared, accompanied by her lawyer Christopher S. Inglese, Esq. All of the Defendants appeared, accompanied by their lawyer Patrick R. Watts, Esq. Kendra E. Johnston, RPR, CRR, served as court reporter.

After due deliberation upon the record, the evidence and argument the parties presented and the applicable law, this Court concludes that all of the Plaintiff's causes of action should be dismissed.

PROCEDURAL BACKGROUND

*was voluntarily w/d
from cause of action & not
belonging in here.*

Plaintiff commenced this action on October 17, 2012. She asserted two causes of action. The first was styled as Wrongful Adverse Possession Award. She sought to set aside the judgment rendered against her in the case numbered 2006-CP-08-2581 because of alleged fraud upon the court.

Plaintiff's second cause of action was for an easement by necessity across real property of one of the Defendants, Janet Lynne Hudson.

Defendants filed their Answer and Counterclaims on November 27, 2012. Their counterclaims were to enforce the judgment rendered in case number 2006-CP-08-2581, for abuse of process, and for sanctions pursuant to the Frivolous Civil Proceedings Sanctions Act.

Prior to trial, both sides submitted pre-trial briefs. Within hers, Plaintiff withdrew her wrongful adverse possession award cause of action.

FINDINGS OF FACT

By deed recorded in the Berkeley County Register of Deeds Office on January 27, 1923, in Book A51, page 227, all the parties' ancestor, Thomas Jackson, acquired real property located in Berkeley County identified as Lot 11, containing about 10.3 acres. It is located between U.S. Highway 17-A to the west and Branch Road to the east.

By a succession of deeds during the early 1930's, Thomas Jackson conveyed out most of this property.

His last out conveyance was the deed recorded September 21, 1935, in Book A60, page 274 to his son and Defendants' father and grandfather Ruben Jackson.

That deed describes the property conveyed to Ruben as containing three acres butting and bounding north by lands of Fred Jackson, east by lands formerly of H. L. Barker, south by lands of Wesley Adkins and West by lands of Frank Mizzell. It is a general warranty deed. It did not expressly reserve any access easement in favor of Thomas Jackson's remaining property.

Later Ruben Jackson conveyed out the east end of his property fronting on Branch Road described as containing one acre by deed dated April 9, 1942, recorded in Book A69, page 324.

Thomas Jackson retained until his intestate death in 1947 the property Plaintiff now owns. It is landlocked, having no border along any public right of way.

Plaintiff's father John H. Jackson acquired title to five-sixths of his father Thomas Jackson's property by deed dated January 21, 1969, recorded in Book A194, page 79.

That deed describes the property as containing two acres, more or less, butting and bounding "on the north by lands of Ruben Jackson... [and]...on the west by J. W. Adkins." It further describes the property as "being the remaining portion of a tract of land...conveyed to Thomas Jackson...."

Plaintiff acquired title to all of this property from her mother Eunice Jackson and from several cousins by deed recorded December 16, 1983, in Book A537, page 172. Her deed recites verbatim the same legal description as the deed to her father.

In this action Plaintiff claimed her easement by necessity over the southern portion of Ruben Jackson's remaining property. She sought the easement to connect her property to U.S. Highway 17-A.

Sometime shortly after Ruben Jackson's death in 1985, Plaintiff began asking Ruben's wife Lurline and his children Henry Jackson and Mildred Hudson for access across their property to her property. They consistently refused to grant Plaintiff any access.

On November 28, 2006, Plaintiff initiated a lawsuit against Lurline and her granddaughter Janet L. Hudson. That suit was numbered 2006-CP-08-2581. In that action Plaintiff asserted that an acre of the property those defendants occupied was a part of the property she had acquired that Thomas Jackson still owned at his death.

According to the evidence she presented for this case, her theory for that assertion was as follows. Thomas Jackson deeded to Ruben Jackson three acres. His deed did not state "more or less" after the stated quantity. Ruben conveyed out one acre. That left him with two. Plaintiff has title to two acres, more or less, being the remaining portion of the tract conveyed to Thomas Jackson. At some point she determined that Ruben Jackson's family was occupying about three acres. She concluded that they were occupying an acre that was unaccounted for amongst Thomas Jackson's out conveyances. As such, it belonged to her as part of the remaining portion of Thomas Jackson's tract.

Exhibit 11 of the present case is a plat Plaintiff commissioned and had recorded on January 30, 2007, in Cabinet R, page 260-A. It is of the property Plaintiff claimed. The plat includes a revision note that states, "Revised on November 21, 2006, to show 50' Ingress/Egress Easement."

Plaintiff's theory relied heavily upon the quantity of acreage stated in the deed to Ruben Jackson and the absence of the phrase "more or less." Her theory further relied upon the phrases in her deed, "more or less" and "being the remaining portion of a tract of land...conveyed to Thomas Jackson."

After a trial on December 11, 2007, the then Berkeley County Master in Equity, Honorable Robert E. Watson, issued a Final Order dated March 12, 2008, finding that the property Plaintiff claimed belonged to Lurline Jackson by virtue of the deeds the Court had

examined and by virtue of Lurline's and her husband Ruben's long time continuous, hostile, open, actual, notorious and exclusive use, occupation and possession of the property.

Plaintiff's expert witness concluded that the deeds Judge Watson referred to are the same deeds described in this Order, including the 1935 deed to Ruben Jackson.

On October 17, 2012, Plaintiff commenced this lawsuit asserting that Judge Watson's March 12, 2008, Final Order operated as a severance giving rise to an easement by necessity across Defendants' property in favor of her property.

At the conclusion of her case Plaintiff asked for an award against Defendants for her attorney's fees for bringing this action.

Defendants presented no evidence in their case to support a ruling under the Frivolous Civil Proceedings Sanctions Act.

Defendants did not present adequate evidence to support a ruling of abuse of process.

Plaintiff's withdrawal of her first cause of action mooted Defendants' first cause of action for enforcement of the judgment rendered in case number 2006-CP-08-2581.

CONCLUSIONS OF LAW

Plaintiff claimed an easement over Defendants' property in favor of her property upon the theory of necessity. She claimed Judge Watson's March 12, 2008, order in case number 2006-CP-08-2581 operated as the severance element of that theory.

The elements of a claim for easement by necessity are: (1) unity of title, (2) severance of title, and (3) necessity. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 418-19, 633 S.E.2d 136, 140-41 (2006). "To establish unity of title, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person." *Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002). Severance of title means that title to a larger tract was "severed" by conveyance of a part to the plaintiff's predecessor in title and of a part to the defendant's predecessor in title; "they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance." *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375 (S.C., 1927); see also *Turnbull v. Rivers*, 14 S.C.L. 131, 139 (Ct.App.1825) ("The necessity by which a person derives a right of way, is when one person sells to another lands inclosed on all sides by other lands. Here[,] the law imposes an obligation on the

seller to allow the purchaser a right of way over his adjacent land.”). *Paine-Gayle Props. LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528 (S.C. App., 2012).

The Final Order in case 2006-CP-08-2581 did not operate as a severance. There was no unity of title. Therefore there was no severance. In 2006 Plaintiff did not own Defendants' property together with her property. Judge Watson's Order simply made a finding that the property Plaintiff claimed as hers had actually belonged to Lurline and Ruben Jackson since 1935.

Judge Watson's Order did not find that Defendants' property belonged to the Plaintiff, then order it conveyed to Defendants, say, for example, by adverse possession or by partition. Judge Watson's Order made no finding that there was any unaccounted for acre of land.

Note the legal description someone prepared for the recorded deed to Plaintiff's father in 1969. Plaintiff took record title to that property by that same description in 1983. She used that same description in the Complaint in 2006, claiming it included additional property. Judge Watson's order caused no alteration whatsoever to that description. The description remains intact on the public record.

Plaintiff's reliance upon a strict acreage count in a deed from 1935 is unfounded. She presented no evidence about the accuracy of tools to measure acreage or the standards for crafting legal descriptions utilized in 1935. She presented no evidence about how this particular piece of property was quantified.

"[U]nder the rules for determining disputed boundaries 'the quantity of land named in the deed is ordinarily one of the lowest in the scale of importance.'" *Klappman v. Hook*, 206 S.C. 51, 32 S.E.2d 882, 883 (1945). (quoting *Holden v. Cantrell*, 100 S.C. 265, 84 S.E. 826 (1915)). *Coker v. Cummings*, 671 S.E.2d 383, 381 S.C. 45 (S.C. App., 2008).

In locating lands the following rules are resorted to, and generally in the order stated: First, natural boundaries; second, artificial marks; third, adjacent boundaries; and, fourth, courses and distances. *Connor v. Johnson*, 59 S. C. 115, 133, 37 S. E. 240, 248. *Holden v. Cantrell*, 100 S.C. 265, 84 S.E. 826 (S.C., 1915). (Underlining added).

Note the absence of quantity in the list recited in the Holden case.

An example of the danger in relying too strictly upon stated acreage is this. The stated acreage of all the out conveyances by Thomas Jackson total 8.75. That subtracted from 10.3 would leave only 1.55 acres retained by Thomas and ultimately acquired by Plaintiff.

A clear severance of the parties' properties did occur in 1935. The same person, Thomas Jackson, owned both pieces. He deeded the exterior piece to Ruben Jackson and retained the interior piece for himself. Unfortunately, that transaction occurred eighty years ago. Plaintiff could not produce any evidence in this case about the circumstances surrounding that transaction which would demonstrate that an easement across Ruben's property was strictly necessary for the enjoyment of Thomas' property. She could produce no evidence to prove an implied reservation of an easement across Ruben's land in derogation of the general warranty Thomas had given. She could produce no evidence to establish Thomas' intent in this regard. For example, evidence at trial indicated that even today there are no geographical impediments surrounding Plaintiff's property making it significantly inconvenient to cross over other adjacent land. Section 15-3-380, Code of Laws of South Carolina (1976) as amended. *All Saints Parish v. Waectumaw v. The Protestant Episcopal Church*, 358 S.C. 209, 595 S.E. 2d 253 (Cl. App. 2004). *Brasington v. Williams*, *id.*

Plaintiff's cause of action is barred by the doctrine of *res judicata*. Janet L. Hudson is the owner of record of the property over which Plaintiff sought an easement in this case. Ms. Hudson was a defendant in Plaintiff's 2006 action. The parties are identical. In this action Plaintiff sought an easement over a parcel of real property created by a transaction that occurred in 1935. In 2006 Plaintiff sought title to the same real property created by that same 1935 transaction. The subject matter in both cases is the same. The idea of access across this piece of property between U.S. Highway 17-A and her property was on her mind in 2006. "She also testified that should the Court find her to be the owner of the parcel titled Lot 2 in the aforementioned survey, that would then give her access to U.S. Highway 17-A from her property." 2006-CP-08-2581 Final Order, p. 2. She testified in this case that she had started asking Ruben's children about access sometime in the mid 1980's. In November 2006, she had an ingress/egress easement depicted across Defendant's property on the plat she commissioned and used in her 2006 case. She could have, and should have, raised the issue of access in the alternative in the 2006 action.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Blum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994); *Catawba Indian Nation v. State*, 407 S.C. 526, 756 S.E.2d 900 (S.C., 2014).

This Court need not address Plaintiff's claim for attorney's fees. She did not prevail.

Defendants are not entitled to an award for their attorney's fees and costs. The *Brasington* case quoted and cited above would indicate some reasonable, albeit remote, basis for Plaintiff to bring this action.

For the same reasons Defendants cannot prevail on their abuse of process cause of action.

Defendants' cause of action to enforce a judgment is moot. Prior to trial Plaintiff withdrew her cause of action to set aside that judgment.

Based upon the findings and conclusions set forth above this Court issues the following

ORDERS

All of Plaintiff's causes of action are dismissed with prejudice.

All of Defendants' counter claims are likewise dismissed with prejudice.

AND IT IS SO ORDERED.

4/27, 2015
Moncks Corner, SC


Honorable Dale E. Van Slambrook
Master in Equity
Berkeley County

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills,

Plaintiff,

vs.

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

Defendants.

**ORDER DENYING
MOTION**

15 SEP -8 AM 11:07
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
2015

On July 23, 2015, this Court heard argument on Plaintiff's Motion to Reconsider Final Order or in the Alternative for a New Trial, filed May 6, 2015. Plaintiff moved for this Court to reconsider its Final Order in this case enrolled on April 27, 2015.

Plaintiff's attorney Christopher S. Inglese, Esq. appeared, along with his client. Defendants' attorney Patrick R. Watts, Esq. appeared, along with his clients.. After due deliberation upon the record, the argument the parties presented, and the applicable law this Court concludes that Plaintiff's Motion should be denied in all respects.

FINDINGS OF FACT

Throughout this Order documents referred to as recorded are recorded in the Berkeley County Register of Deeds office. Probate records referred to are filed in the Berkeley County Probate Court.

By deed dated January 21, 1969, recorded in Book A-194, page 79, four of Thomas and Ella Jackson's six children conveyed to one other of their children John H. Jackson all their right, title and interest in and to a parcel of land stated to contain "two (2) acres, more or less, and butting and bounding...on the north by lands of Ruben Jackson, formerly part of the same tract;...being the remaining portion of a tract of land said to contain ten and 3/10 (10.3) acres conveyed to Thomas Jackson by D.E. Hill by deed dated January 20, 1923, and of record in the Office of the Clerk of Court for Berkeley County in Book A-51, at Page 227,...."

Recitals in this deed state that Thomas Jackson had died intestate twenty two years earlier in 1947 and that Ella Jackson had died intestate twenty one years earlier in 1948.

On or about May 12, 1974, John H. Jackson died testate. His duly probated Will dated

July 28, 1970, devised "the two (2) acres of land which I purchased from the Heirs of my late father, the late Thomas Jackson" to his wife Eunice Jackson for and during the term of her life, and from and after her death or upon her remarriage, devised the two (2) acre parcel of land unto his daughter Jackie Jackson. All parties agree that Jackie Jackson is the Plaintiff.

Fourteen years after her father acquired the property described above Plaintiff acquired it by deed dated November 30, 1983, recorded December 16, 1983, in Book A-537, page 172. Her deed uses the same legal description as used in her father's 1969 deed.

Twenty three years later, on November 28, 2006, Plaintiff sued Ruben Jackson's nonagenarian widow Learline Jackson and granddaughter Janet L. Hudson over the property she got in 1983. That lawsuit is numbered 2006-CP-08-2581. Janet L. Hudson is also a Defendant in the present case.

In her Complaint Plaintiff described the real property the subject of her lawsuit simply with the same legal description found in her 1983 deed and her father's 1969 deed. She alleged that the defendants were depriving her of use of the property by placing a mobile home on it.

On December 11, 2007, the former Berkeley County Master in Equity, Honorable Robert E. Watson conducted the trial on the merits of Plaintiff's lawsuit.

On March 12, 2008, Judge Watson issued his Final Order Denying Plaintiff Relief and Quieting Title in Defendant Learline Jackson, enrolled March 13, 2008. Plaintiff's Exhibit 10.

Plaintiff did not seek reconsideration of that order. She did not appeal. It is now the law among these parties.

According to that Order Plaintiff introduced a plat she had had commissioned that delineated a 1.207 acre lot designated as Lot 2. This plat also delineated a parcel designated as Lot 3 with Plaintiff's name underneath that. The plat states that this Lot 3 contains 1.887 acres. Plaintiff's Exhibit 11.

According to Judge Watson's order Plaintiff testified that she believed Lot 2 belonged to her. As proof she offered up various deeds from Thomas Jackson and the Last Wills and Testaments of various Jackson family members. Plaintiff also testified that should the Court find her to be the owner of the parcel titled Lot 2 that would then give her access to U.S. Highway 17-A from her property. One can reasonably surmise that the various deeds and Wills Plaintiff

presented to this Court, were, or should have been, the same ones she presented to Judge Watson. Plaintiff's Exhibits 4 through 8 inclusive.

A remainderman of Learline's property Henry Russell Jackson testified in 2007 and an attorney Rutherford P.C. Smith, Esq. testified as an expert witness on Learline's behalf. Judge Watson's order summarizes their evidence. Mr. Jackson is a Defendant in this case.

Judge Watson found that the lands in question were part and parcel of lands of Learline Jackson (life estate) based upon the testimony of all the witnesses and the deeds and documents examined by the court.

By deed dated September 21, 1935, recorded September 21, 1935, in Book A-60, page 274, Thomas Jackson conveyed to Ruby Jackson a parcel of land described by named adjacent landowners and stated to contain 3 acres. All parties to this case agree that "Ruby" was Learline's husband Ruben. Plaintiff's Exhibit 7A.

The exhibits in this case show that the Lot 2 Plaintiff claimed in 2006 lies within this property conveyed to Ruben. Plaintiff's Motion acknowledges that.

This deed to Ruben was a general warranty deed. It reserved no easement of any sort.

Four years after Judge Watson enrolled his order that Plaintiff never owned Lot 2, six years after Plaintiff commenced her lawsuit asserting title to Lot 2 and 77 years after Ruben Jackson took title by general warranty deed to the land that included Lot 2, Plaintiff commenced this present lawsuit asserting an easement for access across Lot 2 upon the theory of necessity.

Plaintiff proceeded upon two prongs. First, "Plaintiff...had always believed that she owned (as part of her father's grant in the 1969 deed) the lower portion of the property subsequently adjudicated in the 2006 lawsuit to be Ruben Jackson's property." "Plaintiff (and her father before her) always assumed, believed and used the property that was the subject of the 2006 lawsuit as if it were part of her lands." "[T]he 2008 order (from the 2006 lawsuit) operated as the date of severance, based on the fact that 2008 order adjudicated...that the lands... previously believed by the Plaintiff to be part of her tract, were actually part of the lands conveyed to Ruben Jackson in 1935...."

Secondly, "if the 1935 deed into Ruben Jackson included all of the area of land in question, as determined by the 2008 order, then this conveyance may have been the moment of

severance, which actually rendered the Plaintiff's tract landlocked...." "[T]he Plaintiff's tract and the tract conveyed to Ruben Jackson in the 1935 deed derived from the lands conveyed to Thomas Jackson in 1923." "Thomas Jackson never owned the lands to the South of the Plaintiff's tract, ...Thomas Jackson conveyed-out the lands to the East and West of the Plaintiff's tract during his lifetime." "[A]fter the conveyance from Thomas Jackson to Ruben Jackson in 1935, the residual lands of Thomas Jackson (the Plaintiff's tract) would have been rendered absolutely landlocked, with no access to a public right-of-way." The quoted sentences above are the Plaintiff's, taken from pages 4 and 6 of her Motion to Reconsider Final Order to which this Order applies.

CONCLUSIONS OF LAW

Judge Watson's 2008 order did not operate as a severance of any of Plaintiff's property. First, it lacks certain technical elements of a conveyance. For instance, it lacks two witnesses. It lacks words of grant, bargain and sale. Section 27-7-10, Code of Laws of South Carolina (1976) as amended (Code).

More fundamentally Judge Watson's order does not actually convey any land away from the Plaintiff. The order found that Plaintiff never had title to that land to begin with. Simply put, Plaintiff went to court asserting, "I believe I own that property. It is part of the land my father got in 1969 and that I got in 1983." Judge Watson ruled, "No, you failed to prove you own that property. To the contrary, all the evidence indicates you and your father never owned that property. Your grandfather Thomas deeded that property to your uncle Ruben in 1935." All that Judge Watson's order did was disabuse Plaintiff of her belief that she and her father ever owned the land. *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 433 S.E.2d 875 (Ct. App. 1992).

There was never any actual, physical unity of title between the land Plaintiff got in 1983 and the land she claimed in 2006. Judge Watson's order took no land that she had title to and conveyed it to the defendants in that case. Thus there was no severance. Thus Judge Watson's order gave rise to no easement of access by necessity across Defendants' land in favor of Plaintiff's land. *Paine Gayle Properties, LLC v. CSX Transp. Inc.*, 400 S.C. 568, 735 S.E. 2d 528 (Ct. App. 2012). *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375 (1927). Plaintiff provided this Court with no law on easement by necessity based upon imaginary unity of title.

Plaintiff is not entitled to an easement of access by necessity based merely upon Thomas

Jackson's 1935 conveyance to Ruben Jackson. That conveyance indeed left Thomas Jackson's remaining property landlocked. However, the law recognizes that a piece of land can become landlocked and not be entitled to any easement for access to a public right of way. A grantor who landlocks himself by conveying the exterior portion of his property by general warranty deed that does not expressly reserve an access easement does not automatically get the easement by implication. "The *necessity* does not create the right to a way of necessity (*Cannon v. Dick*, 170 N.C. 305, 87 S.E. 224), but is a *circumstance* that indicates the contemplated intent of grantor and grantee,..." *Brasington*, 141 S.E. 375, 381. "If, on the other hand, the *quasi* servient tenement is granted, while the *quasi* dominant tenement is retained, no easement is reserved, by implication,..." *id.*, p. 383.

The reason the law will not ordinarily recognize an implied reservation of an access easement is that it holds the general warranty in the grantee's deed in higher regard. "These rules are founded on the principle that a grantor shall not derogate from his own grant." *id.*

Apparently, the law will recognize an implied reservation of an access easement in favor of a grantor's landlocked remainder under narrow conditions. "[N]o easement is reserved, by implication, *unless it is strictly* (italics added) necessary to the enjoyment of the property retained." *id.*

So it is evident that, in determining the degree of necessity required to establish such an easement, a marked distinction is made between a case in which the *grantor* is claiming the easement over the land conveyed, as being expressly or impliedly reserved to him, and a case in which the *grantee* is claiming the easement over the land remaining in the title of the *grantor*. Under the cases cited, particularly *Crosland v. Rogers*, 32 S.C. 130; 10 S.E., 874, it is held that it is *less difficult* for the plaintiff in the circumstances last stated to establish his easement of necessity than for the plaintiff in the circumstances first stated, for in that event the plaintiff would be claiming in derogation of his own grant, while in the other the grantor will be presumed to have granted that without which the land conveyed by him could not be enjoyed. *id.*, p. 383.

The facts of the *Brasington* case illustrate the kind of circumstances that might support a finding of strict necessity permitting the implication that a grantor reserved an access easement

across his grantee's property without expressing same in their deed. There the interior property lay inside an oxbow of a wide river. One can reasonably conclude that the circumstances surrounding the transaction must be so substantial and obvious that the grantee and his successors could never deny that grantor had no other choice but to cross grantee's land.

Therefore, Plaintiff needed to provide evidence of the circumstances surrounding the 1935 conveyance that demonstrated a strict necessity for Thomas Jackson's property to have that access easement across Ruben's property and nowhere else. Plaintiff failed to provide any such evidence.

Plaintiff most probably could not have done that, anyway. Such evidence very likely no longer exists after 77 years. There would be, for example, no direct eyewitness testimony about how Ruben and Thomas were handling the access issue or what physical conditions affected Thomas' property. Plaintiff's expert witness scoured the public records and found nothing there.

On the other hand, Defendants in this case presented evidence of present day conditions indicating no geographical or topographical impediments to accessing a public right of way across lands to the east, south or west of Plaintiff's property. Their evidence actually revealed that there is a county maintained dirt road a short distance to the south of Plaintiff's property with high ground in between.

South Carolina's Statute of Repose bars Plaintiff from any relief. By this action and her 2006 action she has attempted to disrupt a *status quo* that has been in place and observed and relied upon by Ruben Jackson and his immediate family for over three quarters of a century. Section 15-3-380. Code of Laws of South Carolina (1976) as amended. *All Saints Parish Waccamaw v. The Protestant Episcopal Church*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004).

South Carolina's Statute of Limitations for filing actions to recover real property also bars Plaintiff from relief. In 1983 she took title to land said to contain two acres. In this action and in her 2006 action she testified that she believed the property conveyed to her by that 1983 deed included an additional acre, and that additional acre afforded her access to U.S. Highway 17-A. She waited over twenty years before seeking judicial declarations affirming her beliefs. Thomas Jackson himself had 12 years from 1935 to 1947 to resolve the access issue on the public record. Thomas Jackson's children, including John H. Jackson, had twenty two years between 1947 and 1969 to resolve the access issue on the public record. Section 15-3-340,

Code.

South Carolina's doctrine of *res judicata* bars Plaintiff from any relief. In her 2006 case she testified that should the Court find her to be the owner of the parcel titled Lot 2 in her survey that would then give her access to U.S. Highway 17-A from her property. She was concerned about access then. One can reasonably conclude that someone claiming outright title to three acres when her deed states she got only two would be mindful that the Court might find she did not own the additional acre. She had the opportunity to ask the Court for an easement over Lot 2 if the Court found she did not own it. Judge Watson's order indicates she did not ask. The *res judicata* doctrine mandates that she should have. Since she did not in 2006, she cannot now. "Under the doctrine of *res judicata*, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'" *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

Having reached the conclusions as set forth above on the core elements of Plaintiff's case this Court need not address any of the other matters set out in her motion.

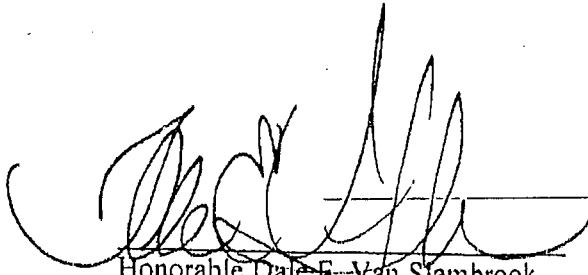
ORDERS

Based upon the foregoing findings and conclusions, together with those set forth in this Court's Final Order in this case enrolled April 27, 2015, this Court,

ORDERS Plaintiff's Motion to Reconsider Final Order or in the Alternative for a New Trial filed May 6, 2015, denied in all respects.

AND IT IS SO ORDERED.

9/4, 2015
Moncks Corner, SC


Honorable Dale E. Van Stambrook
Master in Equity
Berkeley County

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills,

Plaintiff,

vs.

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

Defendants.

CERTIFICATE OF SERVICE

The undersigned certifies that she has caused the documents listed below in the above-captioned case, to be served via United States Mail, first-class, postage-paid, on the parties listed below on September 11, 2015.

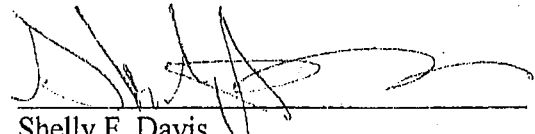
Documents:

- Order Denying Motion
- Certificate of Service

Parties:

- Christopher S. Inglese, Esq.
1011 Bay Street, Suite 305
Beaufort, SC 29902

September 11, 2015



Shelly F. Davis
Assistant to Patrick R. Watts
Summerville, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills,

Janet Lynne Hudson, Henry Russell Jackson, and Mildred
Jackson Hudson,
DEFENDANT(S)

PLAINTIFF(S)

Submitted by: Patrick R. Watts

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ 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

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: _____

INFORMATION FOR THE PUBLIC 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.

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/Master in Equity/Special Referee

Judge Code

Date

FILED
15 SEP - 8 AM 11:07
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Inglese

P.O. Box 21796

Charleston, SC 29413

ATTORNEY(S) FOR THE PLAINTIFF(S)

Watts Law Firm PA

P.O. Box 2046

Summerville, SC 29484

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

6. That the disputed property was the Plaintiff's only access to a parcel solely owned by Plaintiff and known as TMS# 180-00-02-016.
7. That the Plaintiff, along with other members of the family, shared the disputed parcel for the purpose of planting vegetables, access to TMS#180-00-02-016 was continuously available and exercised by members of the Jackson family.
8. That because of Plaintiff's and other family members' use of the disputed parcel the Defendants never had continuous or exclusive use, occupation and/or possession of the land for the statutory period because other family members planted on the disputed property (thereby disrupting exclusive and continuous use) and because **Plaintiff has continuously used the disputed parcel for means of accessing her parcel TMS# 180-00-02-016.**
9. That the Defendant, by and through Counsel, concealed documents from Plaintiff during discovery period by failing to respond to Plaintiff's request for production of documents.
10. That Defendant, made misrepresentations by testifying to the Court that Defendants' use of the disputed property was exclusive and continuous for the statutory period.
11. That the Defendants apparently engaged in a deliberate concealment of the expert witness's connection to the Defendants as their attorney representing them throughout the litigation process by written and verbal communications with the pro se Plaintiff.
12. And that this Honorable Court gave prejudicial weight to Defendant Smith's expert testimony that is clearly unreliable because of his personal interest in the outcome of the litigation, failure to be unbiased, his apparent failure to disclose to the Court the nature of his representation of the Defendants and apparent failure to disclose to the Court his clear bias.

13. Furthermore, the Court gave extraordinary weight to an unreliable, biased expert witness and the Plaintiff in this matter was prejudiced by the Defendant's concerted effort to conceal and misrepresent and failure to treat adversarial parties with fairness as required under the Rules of Evidence and Rules of Professional Conduct.
14. That by this Honorable Court's order dated March 13, 2008 Plaintiff's property is landlocked and has no access from a public right of way and the Defendants have denied Plaintiff access to her property and caused great expense in bringing the current action.
15. That the Berkeley County tax records reflect the fact that no taxes have been paid on the disputed parcel for at least the past ten years;
16. And that the Berkeley County tax records reflect that the Defendants' have paid taxes on 1.91 acres whereas Defendant's wrongfully claim ownership of 3.2 acres.
17. That this Honorable Court entered a final judgment March 12, 2008 relying on Defendant(s') and/or Counsel's perjury or intentional scheme to defraud the court by concealing information about Plaintiff's use of the disputed land, about other family members use of the land and about Defendant's tax records.
18. That Defendant(s') and/or Counsel's conduct in 2008 constitutes extrinsic fraud upon the Court which justifies setting aside the 2008 judgment.
19. That Defendant(s') conduct failing to acknowledge that the disputed property was used by other Family members after 1985 until 2008 and that by failing to acknowledge the shared use of the property the Defendant's misrepresented to the Court that their use of the property was exclusive and continuous.

AS A FIRST CAUSE OF ACTION

(Wrongful Adverse Possession Award)

20. That the Plaintiff repeats all forgoing paragraphs as if repeated herein verbatim.
21. That the Plaintiff brings this action as an independent action to relieve a party from judgment or to set aside a judgment for fraud upon the court.
22. That pursuant to South Carolina Rules of Evidence 702 and State v. White, 382 S.C. 265 (2009) an expert's reliability must be inquired into by the trial court and that the trial court shall then make a determination on both the qualifications of an expert witness as well as his reliability.
23. That pursuant to State v. White, a party (the Defendants in this instance) must establish that the expert witness meets both the necessary qualifications including his reliability.
24. And that, the Defendants purposefully concealed the production of documents during the Discovery process and that Defendant's expert witness (who was also Defendant's attorney) wrongfully testified that the rightful owners of the disputed property are the Defendants when in written correspondence to the Plaintiff the expert witness/attorney asserted that all of the heirs of John Jackson have an interest in the property.
25. And that Defendant's Attorneys failed in their duty of Candor to the Tribunal and Fairness to an Opposing Party by apparently not disclosing the nature of the relationship of the expert witness as Attorney for the Defendants as well as failing to provide the documents requested by Plaintiff through a properly filed and served Request for Production.
26. And that had this Honorable Court been made aware of the expert witness's overwhelming bias and personal interest in the outcome of the litigation, this Honorable

Court would not have qualified Defendant's expert witness or in the alternative would have properly considered and given minimal weight to the expert witness's testimony because of his bias and relationship with the party Defendants.

27. That the Defendants had a duty to disclose to the Court the fact that the disputed property had not been used exclusively by them and that historically the Plaintiff accessed her property through the presently disputed property.

28. And finally, had the Defendants acted properly under the Rules of Evidence and under the Rules of Professional Conduct, that this Honorable Court would have found that the Defendants did not meet the necessary requirements for a defense and counterclaim of adverse possession.

AS A SECOND CAUSE OF ACTION

(Easement by Necessity)

29. That the Plaintiff repeats all forgoing paragraphs as if repeated herein verbatim.

30. That the Plaintiff brings this action pursuant to § 15-53-10, *et. seq.*, of the Code of Laws of South Carolina, as amended, and under the common law of the State of South Carolina, for the purpose of establishing an easement by necessity for the benefit of the tract owned by the Plaintiff, as described herein, and across the disputed tract currently wrongfully occupied by the Defendants, as described herein.

31. That the Plaintiff, Cynthia J. Mills, is the current record owner of the alleged dominant tract by virtue of that certain deed dated December 16, 1983, and recorded in the Office of the Register of Deeds for Berkeley County, South Carolina in Book ___A537___, at Page _0172___.

4. That the Defendants are the wrongful occupiers of the alleged servient tract by virtue of that certain deed dated May 24, 2011, and recorded in the Office of the Register of Deeds for Berkeley County, South Carolina in Book 8946, at Page 120 and that Defendant's wrongfully filed said referenced plat and deed with the Berkeley County Government offices. The Plaintiff has named as parties to this action Mildred Hudson and Henry Russell Jackson the previous owners and Defendants in the initial action.

4. That the tract wrongfully occupied by the Defendant is real property located in Berkeley County, South Carolina, which is more particularly known and described, to-wit as an approximately one (1) acre portion of the following described parcel:

— All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situate, lying and being in 2nd St. Johns Parish, Berkeley County, South Carolina, MEASURING AND CONTAINING 1.55 Acres, having metes, bounds, courses, distances, content and delineations as are more fully shown on plat captioned "PLAT SHOWING LOT 1 & 2 BEING SUBDIVIDED INTO TRACT A (1.56 ACRE) AND TRACT B (1.55 ACRE) PROPERTY OF MILDRED HUDSON AND HENRY RUSSELL JACKSON, 2nd ST. JOHNS PARISH, BERKELEY COUNTY, SOUTH CAROLINA", dated April 27, 2011, prepared by Cleatwood E. Droze, RLS No. 4550, and reference is hereby craved to said plat for a more complete and accurate description thereof. Said plat being recorded in the Office of Register of Deeds for Berkeley County, South Carolina, in Plat File Cabinet O, at Page 244-Q. TMS NO. Portion of 180-00-02-017.

Being a portion of the property acquired by grantor and grantee under the Will of Ruben Jackson, a/k/a/ Ruby Jackson, filed January 3, 1985 in Probate Roll No. 85-ES-08-01 which appears in the Office of the Probate Court for Berkeley County, South Carolina; also by Deed of Distribution recorded in Deed Book T-85, at Page 1 in the records for Berkeley County.

Tax Map Number: 180-00-02-113

5. That the tract owned by the Plaintiff is real property adjacent to the tract wrongfully occupied by the Defendants, which is more particularly known and described, to-wit:

ALL that certain piéce, parcel or lot of land, situate, lying and being in Secohd St. John's Parish, Berkeley County, South Carolina, measuring and containing two (2) acres, more or less, and butting and bounding as follows: On the north by lands of Ruben Jackson, formerly a part of the same tract; on the east by lands of Edward Clark, formerly a part of the same tract; on the south by lands formerly of C.A. Jones, now said to be lands of Burden; and on the west by lands of J.W. Adkins, formerly a part of the same tract; being the remaining portion of a tract of land said to contain ten and 3/10 (10.3) acres conveyed to Thomas Jackson by D.E. Hill by deed dated January 20, 1923, and of record in the Office of the Clerk of Court for Berkeley County in Book A-51, at Page 227, which said ten and 3/10 (10.3) acres is said to be shown and delineated and designated as Tract No. 11 on a plat of the Barker Tract prepared by McCrady Brothers and Cheves in November, 1918, and of record in said Office in Plat Book B, at Page 2012.

Tax Map Number: 180-00-02-016

6. That the tract owned by the Plaintiff and the tract wrongfully occupied by the Defendants were both subdivided from a larger tract 10.3 acre tract of land, heretofore owned by __Thomas Jackson__, under that certain deed dated and recorded __January 20__, 1923__, in the Office of the Register of Deeds for Berkeley County, South Carolina in Book __A-51__, at Page __227__.
7. That the tract wrongfully owned by the Defendants was subdivided from the larger tract as a result of a final order of this Honorable Court dated March 12, 2008 and purportedly shown on Deed Book 8946 Page 120 and purportedly shown on a plat recorded in the Office of Register of Deeds for Berkeley Count, South Carolina in Plat File Cabinet O, at Page 244-Q.
8. That as a direct result of said court order and subdivision, the tract wholly owned by the Plaintiff, was rendered land-locked and without access to any public or private road for ingress, egress, maintenance or general use and enjoyment.
9. That the Plaintiff requires access to its tract as a necessity of ownership.

10. That the Plaintiff is informed and believes that she is entitled to an easement by necessity across the tract wrongfully occupied by the Defendants for the purpose of accessing Plaintiff's tract, and for the purpose of installing and maintaining utility services to Plaintiff's tract of land.
11. That the Plaintiff is informed and believes that the minimum size of easement that it will require for full enjoyment of its tract would be fifty (50') feet wide and that the most appropriate location for the easement would be along, parallel to and just within the southern boundary line of the tract currently known as TMS# 180-00-02-113.

WHEREFORE, Plaintiffs pray for judgment:

- A. To partition the disputed property in a manner appropriate and consistent with the intent of the original estate holders such that Plaintiff maintains access to and ownership of the appropriate portion of the disputed property, or in the alternative;
- B. Establishing an easement by necessity in favor of the Plaintiff and its successors and/or assigns, across so much of the tract wrongfully occupied by the Defendants as the Court determines to be necessary, which the Plaintiff believes to be fifty (50') feet wide, and in such location as the Court determines to be necessary, which the Plaintiff believes to be along, parallel to and just within the southern boundary line of the tract owned by the Defendants; and,
- C. For such other and further relief as may be deemed just and proper.



Christopher Inglese Attorney at Law LLC
1180 Sam Rittenberg Blvd. Suite 200
Charleston, South Carolina 29407
Telephone: (843) 277-9785
Facsimile: (843) 353-2523
ATTORNEY FOR THE PLAINTIFF

October 15, 2012
Berkeley, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills,

Plaintiff,

vs.

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

Defendants.

ANSWER AND COUNTERCLAIM

OF ALL

DEFENDANTS

MAILED
CLERK OF COURT
BERKELEY COUNTY

2012 NOV 27 AM 10:56

FILED

Answering the allegations of the Complaint, all Defendants allege the following.

1. All allegations of the Complaint Defendants do not specifically admit, deny or otherwise address are denied and they demand strict proof thereof.

2. As to paragraph 1 of the Complaint, Defendants admit that Plaintiff has brought this action but deny any fraud upon the Court and deny Plaintiff's entitlement to any easement.

3. Defendants admit all the allegations of paragraphs 2 through 5, inclusive.

4. Defendants deny all the allegations of paragraphs 6 through 20, inclusive.

5. As to paragraph 21, Defendants admit that Plaintiff has brought his action but deny Plaintiff is entitled to any relief sought and deny any fraud upon the Court.

6. As to paragraphs 22 and 23, Defendants assert that the rule of evidence and the case cited speak for themselves and deny any conclusions Plaintiff has drawn therefrom.

7. Defendants deny all of the allegations of paragraphs 24 through 29, inclusive.

8. As to paragraph 30, Defendants admit Plaintiff has brought this action, but deny she is entitled to any easement and deny that the tract of land she alleges is disputed is actually disputed or wrongfully occupied.

9. Defendants lack sufficient knowledge or information to form a belief about the allegations of paragraph 31 so deny them all and require strict proof.

10. As to the first paragraph numbered 4 on page 6 of the Complaint, Defendants admit Plaintiff has named Mildred Hudson and Henry Russell Jackson as Defendants. Defendants deny all the other allegations of that paragraph and deny Plaintiff has any basis whatsoever for naming



Mildred Hudson and Henry Russell Jackson as defendants.

11. Defendants deny all of the allegations of the second paragraph numbered 4 on page 6 of the Complaint.

12. Defendants lack sufficient knowledge or information to form a belief about the allegations of the paragraph numbered 5 on page 6 of the Complaint, so deny them all and demand strict proof.

13. Defendants lack sufficient knowledge or information to form a belief about the allegations of paragraphs 6 and 7 on page 7 of the Complaint, so deny them all and demand strict proof.

14. Defendants deny all of the allegations of paragraphs 8 through 11, inclusive, on pages 7 and 8 of the Complaint.

AFFIRMATIVE DEFENSE – LACHES

15. All allegations set forth above are repeated here verbatim.

16. Plaintiff had full and fair opportunity to address the qualifications and reliability of the expert witness in her previous case, numbered 2006-CP-08-2581, during the pendency of that case.

17. Plaintiff had full and fair opportunity to address the issue of access in her previous case during the pendency of that case.

18. All issues brought before the Court in that case and all issues that could have been brought arising from the same facts and with the same parties have been adjudicated and ruled upon by the Court.

19. The Court entered its Final Order on March 13, 2008.

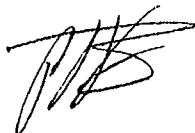
20. The Plaintiff commenced this present action on October 17, 2012, serving Defendants on October 26, 2012.

21. The Plaintiff failed without good reason to address the qualifications and reliability of the expert witness during the previous action.

22. The Plaintiff failed without good reason to address the issue of access during the previous action.

23. The Plaintiff has delayed addressing these issues for over four and a half years since the Court entered its Final Order in the previous case.

24. Plaintiff alleges she acquired title to her alleged landlocked property in 1983.



25. Plaintiff commenced this action to assert a right to an easement by necessity for her property nearly twenty-nine years later.

26. These failures and delays have prejudiced Defendants causing them to spend additional time, effort and expense, for instance in attorney's fees, witness fees, searches for old records and court costs, to now address such issues.

27. Plaintiff should be barred pursuant to the doctrine of laches from prosecuting this action.

AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

28. All allegations set forth above are repeated here verbatim.

29. On March 13, 2008, the Court entered its Final Order Denying Plaintiff Relief and Quieting Title in Defendant Learline Jackson in the case numbered 2006-CP-08-2581.

30. Plaintiff commenced this present action on October 17, 2012, serving Defendants October 26, 2012.

31. The allegations of this present action concern the same facts and the same parties as the previous action.

32. Plaintiff knew or should have known of any claims she might have had arising from the activities of the previous case at the time the Court conducted the trial on the merits of the case certainly by the time she first saw the Final Order.

33. Plaintiff is barred from prosecuting this action pursuant to the applicable three year statute of limitations.

34. Plaintiff alleges she acquired title to her alleged landlocked property in 1983.

35. Plaintiff commenced this action to assert a right to an easement by necessity for her property nearly twenty-nine years later.

36. Plaintiff is barred from prosecuting this action for an easement pursuant to the applicable ten year statute of limitations.

AFFIRMATIVE DEFENSE – RES JUDICATA

37. Plaintiff in this case commenced the previous case numbered 2006-CP-08-2581, as the Plaintiff there late in 2006.

38. The trial on the merits was conducted December 17, 2007.

39. The Final Order was issued March 13, 2008.

40. The matter she addresses in this case arises from the same set of facts and involve the



same parties as in the previous case.

41. Plaintiff had a full and fair opportunity to address in the prior case the matter addressed in this case.

42. Plaintiff is barred from prosecuting this case upon the grounds of res judicata.

MOTION – RULE 12(B)(6)

43. All allegations set forth above are repeated here verbatim.

44. All Plaintiff's allegations in her Complaint fail to state facts sufficient to constitute any cause of action.

45. Plaintiff's entire Complaint should be dismissed.

FIRST COUNTERCLAIM

Enforcement of Judgment

46. All allegations set forth above are repeated there verbatim.

47. The Final Order Denying Plaintiff Relief in case numbered 2006-CP-08-2581 is the law governing the relationship of the parties relative to the real property the subject of this action.

48. Such Final Order has not been altered or amended.

49. Plaintiff sets forth no circumstances that make abiding by the Order an impossibility or otherwise unduly burdensome, or that warrant altering, amending or vacating the Order.

50. Such Final Order should remain in full force and effect.

SECOND COUNTERCLAIM

Abuse of Process

51. All allegations set forth above are repeated here verbatim.

52. The dispute over the subject property has been ongoing among the parties for many years.

53. The parties utilized the previous case numbered 2006-CP-08-2581 to address and finally resolve all disputes.

54. Now, over four and a half years later Plaintiff has commenced this present suit to address matters that were or should have been addressed in the previous suit.

55. Defendants are informed and believe that Plaintiff has commenced this present suit solely for the purpose of harassing and injuring the Defendants, making them spend time, effort and money for no good reason.



56. Plaintiff's case should be dismissed as an abuse of process.

57. Defendants are informed and believe that for such abuse of process they are entitled to an award of actual and punitive damages.

THIRD COUNTERCLAIM

Frivolous Civil Proceedings Sanction

58. All allegations set forth above are repeated here verbatim.

59. Defendants are informed and believe that Plaintiff's claims are clearly not warranted.

60. Defendants are informed and believe that Plaintiff's initiation of this case is intended merely to harass or injure Defendants.

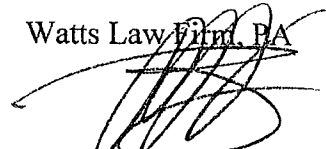
61. Defendants are informed and believe that all Plaintiff's causes of action should be dismissed and that she should be sanctioned for initiating this action.

WHEREFORE, having fully answered the Complaint, all Defendants pray that this honorable Court,

- a. Dismiss all of Plaintiff's causes of action with prejudice.
- b. Order Plaintiff to abide by the Final Order Denying Plaintiff Relief and Quieting Title in Defendant Learline Jackson, case number 2006-CP-08-2581.
- c. Assess all costs and fees of this action, including those of Defendants, against Plaintiff.
- d. Impose sanctions upon Plaintiff.
- e. Order such other and further relief in favor of Defendants as this honorable Court deems appropriate.

FILED
2012 NOV 27 AM 10:56
CLERK OF COURT
BERKELEY COUNTY SC

November 23, 2012
Summerville, South Carolina

Watts Law Firm, PA
By: 
Patrick R. Watts SCBar# 5975
Attorney for all Defendants
P.O. Box 2046
Summerville, SC 29484
1-843-851-7050

FOR A FIRST AFFIRMATIVE DEFENSE
(Fraud/Misrepresentation)

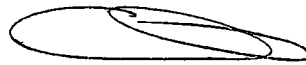
6. The Plaintiff restates and reaffirms her reply as if stated verbatim herein.
7. Pursuant to SCRCP Rule 8(c) and Rule 60(b)(3) Plaintiff asserts the affirmative defense of fraud and misrepresentation by an adverse party as set forth in Plaintiff's complaint.

FOR A SECOND AFFIRMATIVE DEFENSE
(Failure To State A Claim)

8. The Plaintiff restates and reaffirms her reply as if stated verbatim herein.
9. Pursuant to SCRCP Rule 2012(b)(6) Defendants have failed to state a claim for which relief can be granted and therefore should be denied relief requested in Defendants' counterclaim.

WHEREFORE, Plaintiffs pray for judgment as stated in Plaintiff's complaint and:

- A. Plaintiff prays that the Counterclaim be dismissed
- B. For an award of attorney's fees and costs for having to defend said Counterclaim, and
- C. For such other relief as the court deems just and proper.



Christopher Inglese Attorney at Law LLC
1180 Sam Rittenberg Blvd. Suite 200
Charleston, South Carolina 29407
Telephone: (843) 277-9785
Facsimile: (843) 353-2523
ATTORNEY FOR THE PLAINTIFF

November 30, 2012
Berkeley, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT

CYNTHIA JACQUELINE JACKSON
MILLS,

Plaintiff,

v.

JANET LYNNE HUDSON, HENRY
RUSSELL JACKSON, AND MILDRED
JACKSON HUDSON,

Defendants.

Case No. 2012-CP-08-3013

PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT

FILED
2013 JUN 21 AM 2:02
MARY J. HARRIS
CLERK OF COURT
BERKELEY COUNTY, SC

PLEASE TAKE NOTICE that the Plaintiff, Cynthia Jacqueline Jackson Mills, (the "Plaintiff"), by and through her undersigned attorneys, will move before this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order granting the Plaintiff Summary Judgment against the Defendants, Janet Lynne Hudson, Henry Russell Jackson, and Mildred Jackson Hudson (hereinafter the "Defendants," except where individually referenced) as set forth herein. This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and is based, *inter alia*, upon the following grounds:

STANDARD OF REVIEW

A party is entitled to a grant of summary judgment where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case." *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905, 906 (Ct. App. 1993). "Summary judgment is proper where plain, palpable, and indisputable

facts exist on which reasonable minds cannot differ.” *Adamson v. Richland County School Dist. One*, 332 S.C. 121, 124, 503 S.E.2d 752, 753-754 (Ct. App. 1998). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hancock v. Mid-South Mgt. Co.*, 381 S.C. 326, 329-330, 673 S.E.2d 801, 802 (2009). However, “[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” *Shupe v. Settle*, 315 S.C. 510, 516-517, 445 S.E.2d 651, 655 (Ct. App. 1994).

BACKGROUND AND ANALYSIS

I. The Undisputed Facts Demonstrate that Plaintiff has Satisfied her Burden of Proof to Show an Easement by Necessity.

This is an action arising from a dispute over access to a parcel of land situate in Berkeley County, specifically a disputed portion of land known as an approximately one (1) acre tract adjacent to the southern portion of and having TMS No. 180-00-02-017. An action to quiet title to the Property was filed in the Berkeley County Court of Common Pleas having case number 2006-CP-08-2581, more particularly the land known as a portion of Tract B on a Plat filed with the Berkeley County Cabinet R, PG 260-A (the “Disputed Parcel”).¹ This is further described in the Plaintiff’s Complaint, filed with the Court on October 17, 2012, and which is incorporated herein by reference. The Plaintiff’s Reply to Counterclaim, filed on December 5, 2012, also is incorporated herein by reference.

This Disputed Parcel is Plaintiff’s only access to a landlocked parcel solely owned by the Plaintiff and having TMS No. 180-00-02-016. In addition, Plaintiff, along with members of her family, shared and continuously used the Disputed Parcel for the purpose of planting vegetables.

¹ Upon information and belief, the Court entered its final Order on or about March 13, 2008 denying Plaintiff’s requested relief in C/A No. 2006-CP-08-2581.

To establish easement by necessity in South Carolina, a plaintiff must meet the following elements: (1) unity of title; (2) severance of title; and (3) necessity. See *Graham v. Causey*, 284 S.C. 339, 326 S.E.2d 412 (Ct. App. 1985); *Merrimon v. McCain*, 201 S.C. 76, 21 S.E.2d 404 (1942); *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375 (1927); 25 Am.Jur.2d *Easements and Licenses* 22, 33-36.

As set forth in the pleadings and established in Court records, each of the foregoing elements is fully satisfied. Therefore, Plaintiff has met her burden and is entitled to summary judgment absent a showing by the Defendants that any genuine issue of material fact exists. See *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990); Rule 56(c), SCRPC. As shown below, Defendants have admitted material facts and cannot demonstrate any triable issue of fact for the jury. Further, Defendants have failed to submit even a mere scintilla of evidence in order to withstand a motion for summary judgment. See *Hancock v. Mid-South Mgt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

II. An Easement by Necessity is Supported by Evidence in Public Records and Admitted by the Defendants by and through Discovery Responses.

A. The Element of Unity of Title

“To establish unity of title, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person.” *Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452 (2002). The South Carolina Supreme Court held in *Kennedy* that “petitioners have to show that their land-locked tract and respondent’s tract were, at one time, owned by the same owner.” *Id.*

In this case, both the dominant tract (TMS No. 180-00-02-016) and the servient tract (also referred to as the disputed parcel in the pleadings and known as TMS No. 180-00-02-113) belonged to the estate of Thomas Jackson and were both part of an approximately 10.3-acre tract. Furthermore, both tracts are adjoining one another and evidence of this fact is a matter of public

record.

The Response to Question No. 1 of Defendant's Response to Plaintiff's Request to Admit admits that the two parcels were part of the estate of Thomas Jackson, the Grandfather of Plaintiff Cynthia Jacquelyn Jackson Mills, including the 10.3-acre tract. (See attached Exhibit A). The undisputed evidence in the record shows there is no issue of material fact regarding the first element of unity of title, which is required to support a finding of an easement by necessity.

B. The Element of Severance of Title

A "severance" is defined as "[T]he act of cutting off; the state of being cut off." *Black's Law Dictionary*, (8th ed. 2004). The South Carolina Court of Appeals held in *Proctor v. Steedley* that "[s]everance of title means that title to a larger tract was severed 'by conveyance of a part to the predecessor in title of the plaintiff and of a part to the predecessor in title to the defendant; they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance.'" *Proctor v. Steedley*, 398 S.C. 561, 578, 730 S.E.2d 357 (Ct. App. 2012), *quoting Brasington v. Williams*, 143 S.C. 223, 246, 141 S.E. 375, 382 (1927).

In this case, public records from the Berkeley County RMC office and Berkeley County Court records support the fact that these two parcels have been severed. A plat filed with the Berkeley County Planning & Zoning office and the Berkeley County RMC office found in Cabinet R, PG 260-A shows a subdivision of TMS# 180-00-02-017 into Tract A and Tract B. This subdivision was submitted as a result of the decision of this Court in C/A No. 2006-CP-08-2581.

In the above-referenced decision, this Court held that the disputed parcel, a portion of TMS No. 180-00-02-017, belongs to the life estate of Mrs. Learline Jackson, *thereby severing the two parcels* on or about March 12, 2008. All other conveyances contiguous to and otherwise potentially providing access to a public right of way predate the court-ordered severance of the two parcels. Therefore, as a result of the Court ordered conveyance to the Defendants, the Plaintiff's parcel became "landlocked" with no access to a public right of way.

Defendants' responses to Questions Nos. 7, 8, and 9 of Plaintiff's Request to Admit deny that the disputed parcel and Plaintiff's parcel were once owned by the same person, were recently severed in 2008, and that such severance affected Plaintiff's parcel, respectively. (See Exhibit A attached). Oddly, Defendants deny these requests outright yet offer no explanations to support these denials. This starkly contrasts uncontroverted evidence available in the public records that the two parcels have been severed and were once part of the same tract. Therefore, no issue of material fact exists regarding the element of severance of title to support an easement by necessity in this case.

C. The Element of Necessity.

South Carolina protects landowners' ability to access their property as a matter of necessity. *Graham v. Causey*, 284 S.C. 339, 341, 326 S.E.2d 412, 414 (Ct. App. 1985); *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375 (1927); *Merrimon v. McCain*, 201 S.C. 76 21 S.E.2d 404 (1942); *Steele v. Williams*, 204 S.C. 124, 28 S.E.2d 644 (1944). The South Carolina Supreme Court has applied merely a "reasonable necessity" standard as opposed to the alternative "absolute necessity" standard. *Graham*, 284 S.C. at 341. Further, the necessity element requires that such necessity existed at the time of conveyance, and the necessity must not have been created by the person seeking the easement. *Id.*, see also *Boyd v. Bellsouth Telephone Telegraph Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006).

Here, Plaintiff has no access to her property. Approaching from any direction, she would be trespassing in order to access her own property. Until the court-ordered severance in 2008, the Plaintiff had access through the servient track to the dominant tract. As a result of the conveyance by the Court of the servient track to the Defendants, Plaintiff's necessity for an easement was created.

Defendants' response to Request to Admit No. 10 denies that the "necessity of access is reasonable and actual and that Plaintiff has no expectation of access from any other adjacent property owners." Defendants do not explain this response. It is undisputed that Plaintiff has no

access to her property. The most recent severance creating the inaccessible and landlocked parcel is the severance created by the Court's 2008 order conveying the servient tract to the Defendants. Finally, the Plaintiff's need to access her property should not burden other adjacent property owners whose property was severed many years prior to the 2008 severance.

In the instant case, the Plaintiff's necessity meets the reasonable necessity requirement, because the necessity existed at the time of the 2008 severance. The Plaintiff did not create the necessity when it would not otherwise exist

WHEREFORE, for the reasons set forth herein, and in the interests of judicial economy and efficiency, the Plaintiff respectfully requests that this Honorable Court grant her motion for summary judgment, awarding to her all such relief as is just, equitable, and proper as set forth herein, along with such other and further relief as this Court deems appropriate.

Respectfully submitted,

CHRISTOPHER INGLESE,
ATTORNEY AT LAW, LLC



CHRISTOPHER INGLESE

Post Office Box 21796

Charleston, SC 29413

Phone: (843) 277-9785

Fax: (843) 353-2523

chris@ingleselaw.info

Attorneys for the Plaintiff

June 17, 2013
Charleston, South Carolina

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills,

Plaintiff,

vs.

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

Defendants.

DEFENDANT'S RESPONSE TO
PLAINTIFF'S REQUEST TO ADMIT

Pursuant to Rule 36 of the South Carolina Rule of Civil Procedure, the Plaintiff, hereby requests that the Defendant admit or deny the following statements. Each statement for which admission or denial is requested shall be deemed admitted unless Defendant serves his responses within the time period set forth in by Rule 36.

1. That the disputed parcel (the southern portion of TMS#180-00-02-017) and the Plaintiff parcel TMS#180-00-02-016 were both a part and parcel of the estate of Thomas Jackson (the Grandfather of Plaintiff Cynthia Jacquelyn Jackson Mills), including a tract of land approximately 10.3 acres more or less.

Admit.

2. That Mr. Rutherford Smith, Esquire was the Defendants' attorney during the previous action ending in March 2008 and provided numerous written and verbal correspondence to the Plaintiff and that Mr. Rutherford Smith, Esquire testified at the final hearing as an expert witness without disclosing to the Court his relationship to the Defendants.

Deny.

3. That the Defendants failed to properly respond to Plaintiff's request for production in the 2008 case.

Deny.

4. That the Defendants' family members, and the Plaintiff's family members have utilized the disputed property for a variety of uses and enjoyment including planting vegetables, placing trailers, and access to parcel TMS#180-00-02-016.

Deny.

5. Admit that the Court's decision in 2008 severed Plaintiff's parcel from access to a public right of way.

Deny.

6. That Plaintiff has accessed her parcel through the disputed parcel.

Deny.

7. That the severed Plaintiff's parcel and the disputed parcel were both once land that belonged to the same person, Mr. Thomas Jackson (Grandfather to Plaintiff) and Mr. John Jackson (Father to Plaintiff).

Deny.

8. That the Court's decision in 2008 was the most recent severance of the parcel's that once belonged to the estate of the ancestors of the Plaintiff.

Deny.

9. That the Court's decision in 2008 was the most recent severance of parcel's in the Jackson estate affecting the Plaintiff's parcel TMS# 180-00-02-016.

Deny.

10. That the necessity of access is reasonable and actual and that Plaintiff has no expectation of access from any other adjacent property owners.

Deny.

11. That the estate of Ruben Jackson included a three acres parcel.

Deny.

12. That Ruben Jackson deeded a one-acre to Hallerod Mullinax leaving two acres to the estate of Ruben Jackson.

Deny.

13. That now the Defendants' heirs to Mr. Ruben Jackson lay claim to an entire three acres despite the fact that one-acre was deeded to Mr. Mullinax.

Deny.

14. Mr. Reuben Jackson and the Plaintiff agreed in 1982 that access to TMS#180-00-02-016 is through what is now the disputed property.

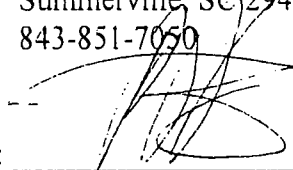
Deny.

15. Admit that no plat was provided in 1998 to DHEC for the permit to put the current trailer on the disputed parcel despite DHEC's requirement that a plat be provided.

Deny.


_____, 2013
Summerville, South Carolina

Watts Law Firm, PA
P.O. Box 2046
Summerville, SC 29484
843-851-7050

By: 

Patrick R. Watts SCBar# 5975
Attorney for the Defendants

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08-3013

Cynthia Jacqueline Jackson Mills,

Plaintiff,

vs.

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

Defendants.

**DEFENDANTS'
RETURN TO
PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Defendants Janet Lynne Hudson, Henry Russell Jackson and Mildred Jackson Hudson, by and through their attorney hereby responds to Plaintiff's Motion For Summary Judgment filed June 21, 2013, in the following respects

I. Particular assertions in Plaintiff's Motion For Summary Judgment.

A. "An action to quiet title to the Property was filed in the Berkeley County Court of Common Pleas having case number 2006-CP-08-2581, more particularly the land known as a portion of Tract B on a Plat filed with the Berkeley County Register of Deeds office in Plat Cabinet R, PG 260-A (the "Disputed Parcel")." Page 2 of Plaintiff's motion.

1. The plat filed in the Berkeley County Register of Deeds office in Cabinet R, Pg. 260-A shows no "Tract B."

2. That plat was voided and cancelled as a cloud on Defendants' title to their land by Order of this Court issued March 13, 2008, in case numbered 2006-CP-08-2581.

B. "Upon information and belief, the Court entered its final Order on or about March 13, 2008, denying Plaintiff's requested relief in C/A No. 2006-CP-08-2581." Footnote 1, page 2.

1. Plaintiff has more than "information and belief" about the referenced order. It is a matter of public record and plainly states, "Plaintiff's action is hereby dismissed with prejudice."

C. "In addition, Plaintiff, along with members of her family, shared and continuously used the Disputed Parcel for the purpose of planting vegetables." Page 2.

1. This is not the law now governing the relationship of the parties. According to this Court's March 13, 2008, order, Plaintiff did not share and continuously use the "Disputed Parcel" with members of her family. That order found, "that even absent the chain of title examined, the lands in question would still belong to Defendant Learline Jackson by virtue of her continuous, hostile (to the claims of the Plaintiff), open, adverse, notorious, and exclusive use, occupation, and/or possession of the land for a period of time exceeding that required for a finding of ownership by adverse possession." (Parenthetical underlined by the undersigned.)

D. "In this case, both the dominant tract (TMS No. 180-00-02-016) and the servient tract (also referred to as the disputed parcel in the pleadings and known as TMS No. 180-00-02-113) belonged to the estate of Thomas Jackson and were both part of an approximately 10.3 acre tract." Page 3.

1. This sentence is for the most part true. Unity of title of Plaintiff's property and the subject property did last belong to Thomas Jackson. It did not carry on to the "estate" of Thomas Jackson. Refer again to this Court's March 13, 2008, order and the deeds in the record of case 2006-CP-08-2581 that support it. Unity of title in Thomas Jackson does not fit with Plaintiff's remaining elements attempting to establish an easement by necessity.

E. "A plat filed with the Berkeley County Planning and Zoning office and the Berkeley County RMC office found in Cabinet R, PG 260-A shows a subdivision of TMS# 180-00-02-017 into Tract A and Tract B." Page 4.

1. This is a misstatement. The plat filed in Cabinet R, page 260-A makes no reference to a Tract A or B. If Plaintiff is referring to the plat recorded in Cabinet O, page 244-Q, it is irrelevant to her argument. A plat is not a conveyance.

F. "In the above-referenced decision, this Court held that the disputed parcel, a portion of TMS No. 180-00-02-017, belongs to the life estate of Mrs. Learline Jackson, *thereby severing the two parcels* on or about March 12, 2008." "Therefore, as a result of the Court ordered conveyance to the Defendants, the Plaintiff's parcel became "landlocked" with no access to a public right of way." Page 4.

1. This is a misstatement. This Court's March 13, 2008, Order did not *convey* any land to Learline Jackson. It merely *confirmed* that the subject property belonged to Learline Jackson based upon a.) "deeds and documents examined by the Court," and b.) Learline Jackson's "continuous, hostile (to the claims of the Plaintiff), open, adverse, notorious and exclusive use,

occupation and/or possession of the land for a period of time exceeding that required for a finding of ownership by adverse possession.”

G. “Uncontroverted evidence available in the public records that the two parcels have been severed and were once part of the same tract.” Page 5

1. This conclusion is absolutely true, but is misplaced. Plaintiff asserts a severance by this Court’s March 13, 2008, order. As noted above that order did not convey any property; it just confirmed Learline had owned it for well over sixty years. ^{that's not what it says} The actual severance occurred about 78 years ago when Thomas Jackson (the predecessor with unity of title) conveyed the subject property to Defendants’ father Ruben Jackson by deed recorded on September 21, 1935, in Book A60, page 274, (the severance) and retained for himself Plaintiff’s property.

H. “Further, the necessity element requires that such necessity existed at the time of conveyance, and the necessity must not have been created by the person seeking the easement. *Id.*, see also *Boyd v. Bellsouth Telephone Telegraph Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006).” Page 5.

1. The necessity in the case of Plaintiff’s property arose on September 21, 1935. Unfortunately the necessity was created by Plaintiff’s predecessor Thomas Jackson. When Thomas Jackson deeded the subject property to Ruben Jackson he landlocked the remaining property he retained. By succession and deeds that remaining property came to Plaintiff. She now seeks an access easement to that property under the doctrine of necessity; but she is a direct successor to the person who created the necessity.

I. “Until the court-ordered severance in 2008, the Plaintiff had access through the servient tract to the dominant tract. As a result of the conveyance by the Court of the servient tract to the Defendants, Plaintiff’s necessity for an easement was created.” Page 5

1. As explained above, this Court did not convey any property, so did not sever any property. Further, this Court found that Plaintiff did not have access through what she asserts is a servient estate. Thus, no necessity was created in 2008. Further, this Court found no unity of title in the subject property and Plaintiff’s property. It found that the subject property belonged to Learline Jackson to the exclusion of Plaintiff, beginning in 1935.

J. “The most recent severance creating the inaccessible and landlocked parcel is the severance created by the Court’s 2008 order conveying the servient tract to the Defendants.” Page 6.

1. This conclusion is erroneous. As noted above, this Court’s March 2008 order merely confirmed that Learline Jackson owned what Plaintiff styles as the “servient estate” free and

clear of any and all claims by Plaintiff; that Learline has had such title in excess of sixty years. The Court's order did not convey any property to anyone. There are no words of grant, bargain and sale in the order.

II. Summary of Plaintiff's case for an easement by necessity.

A. Plaintiff rightly acknowledges that the unity of title for her property and the subject property lay with Thomas Jackson.

B. Plaintiff wrongly argues that the severance occurred with this Court's March 2008 Order.

1. That order did not apply to any property still owned by Thomas Jackson.
2. That order did not convey any property to anyone so did not sever title from anyone. It merely confirmed title in Defendants of the subject property to the exclusion of Plaintiff.
3. That finding perforce includes the finding that there was no unity of title in March 2008.

C. The lack of access to Plaintiff's property did not arise in March 2008. It arose in September 1935 when Thomas Jackson voluntarily cut himself off from public rights of way by his conveyance of the subject property. Thomas Jackson did not convey a landlocked parcel, he retained it. The doctrine of easement by necessity does not apply to that circumstance. Note in the explanations of the doctrine cited below that the landlocked land entitled to access by necessity is the land conveyed out, by a grantor who is presumed to also convey that which is reasonably and actually necessary for the enjoyment of that land.

D. 1. "The theory of the law is that where a person is at one time the owner of the servient and dominant tenements as one tract, and conveys a part thereof to another, it is his intention also to convey that which is reasonably and actually necessary for the enjoyment of the land conveyed." *Graham v. Causey*; 284 S.C. 339, 326 S.E. 2d 412 (S.C. App 1985). *Brasington v. Williams* 143 S.C. 223, 141 S.E. 375, 381 (1927).

2. "The doctrine of easement by necessity is based upon the presumption that the grantor intended the grantee of a landlocked parcel to have access to his property, a right recognized as essential to the enjoyment of the land." *Boyd v. BellSouth Telephone Telegraph Company, Inc.*; 359 S.C. 209, 597 S.E. 2d 161 (S.C. App 2004); *Morrow v. Dyches* 328 S.C. 522, 492 S.E. 2d 420, 424 (ct. App. 1997)

3. "The necessity by which a person derives a right of way, is when one person sells

to another lands enclosed on all sides by other lands. Here, the law imposes an obligation on the seller to allow the purchaser a right way over his adjacent land.” *Paine Gayle Properties, LLC v. CSX Transportation Inc.*; 400 S.C. 568, 735 S.E. 2d 528 (S.C. App. 2012). *Turnbull v. Rivers*; 14 S.C.L. 131, 139 (1927).

III. Other bases to deny Plaintiff’s Motion for Summary Judgment

A. Laches.

1. Plaintiff acquired title to her property in 1983. She began formally asserting claims to the subject property in 2006 with case number 2006-CP-08-2581. That spans a period of 23 years. That case was disposed of against her in March 2008; 25 years later. She commenced this present action to assert an easement by necessity 29 years later.

2. For the past 29 years the Defendants and their ancestors have occupied and used the subject property. For instance, they have established gardens, yards and homes on their property.

3. One can easily conclude that over the past 29 years written records have disappeared and personal memories have faded.

4. In the past 4 years, since March 2008, Defendants have continued maintaining homes on the property and recently conveyed title to a portion of the subject property. That portion includes the location where Plaintiff suggests placing the easement she wants.

5. Plaintiff has always had a good and fair opportunity over the past 29 years to assert her perceived rights to the subject property. There is no evidence to support any good cause for that delay

6. 1. “Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” *Robinson v. Harris*; 391 S.C. 114, 705 S.E. 2d 41 (S.C. 2011). *Hallums v. Hallums*; 295 S.C. 195, 371 S.E. 2d 525 (1988).

2. “In order to establish laches as a defense, a party must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the party asserting the defense laches.” *Tillman v. Tillman*; 2013-UP-199 (S.C. App. May 15, 2013) *Historic Charleston Holdings, LLC v. Mallon*; 381 S.C. 417, 673 S.E. 2d 448 (2009).

B. Statute of Limitations

1. Plaintiff took title to her property in 1983.
2. She formally commenced an action to assert a claim to the subject property for the first time in 2006, twenty three years later.
3. She commenced this suit to assert an access easement in 2012, twenty nine years later.
4. Defendants have occupied and used the subject property without any formal claims or interference by Plaintiff for over twenty years.
5. Plaintiff is barred by the ten year statute of limitations.
 - a. Section 15-3-340, Code of Laws of South Carolina (1976), as amended.
 - b. *Portside Owners Association, Inc. v. South Beach Racquet Club, Inc.*; 2008-UP-153, (S.C. App. March 11, 2008).
6. The bona fide severance of the subject property and Plaintiff's property was in 1935.
7. That was 78 years before Plaintiff formally began asserting a claim to the subject property or an easement over it.
8. Defendants and their predecessors in title have occupied and used the subject property without any formal claims or interference by anyone for over seventy five years.
9. Plaintiff is barred by the forty year statute of limitations.
 - a. Section 15-3-380, Code.
 - b. *All Saints Parish Waccamaw v. The Protestant Episcopal Church*; 358 S.C. 209, 595 S.E. 2d 253 (S.C. App. 2004).

C. Res Judicata

1. Plaintiff asserted a claim to the title to the subject property in 2006.
2. In connection with that claim she commissioned a survey and plat that was ultimately recorded in the Berkeley County Register of Deeds office in Plat Cabinet R, page 260-A.
3. A revision note on that plat states that it was revised on November 21, 2006, to show a 50' Ingress/Egress Easement.
4. One infers from that revision note that Plaintiff did think about an access

easement.

5. She had full and fair opportunity to claim an access easement in the alternative in her 2006 action. She chose not to.

6. In the present case the parties are the same as in 2006, the subject property is the same as in 2006, and the circumstances giving rise to Plaintiff's claim are the same.

7. Plaintiff is barred by the doctrine of res judicata.

8. *Alford v. Tamsberg*; 2007-UP-350, (S.C. App. July 6, 2007).

IV. Final Conclusions on Plaintiff's Motion for Summary Judgment.

A. In this case genuine issues of material fact that remain disputed include at least the following.

1. Was there unity of title in Plaintiff with her property and the subject property in March 2008?

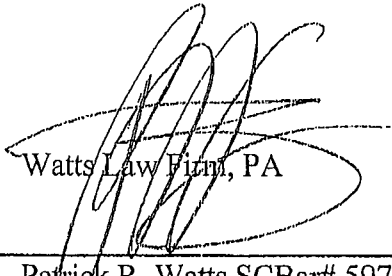
2. Did this Court's March 13, 2008, Order in case 200-CP-08-2581, actually convey title to the subject property from Plaintiff to Defendants?

B. For all the reasons asserted above Plaintiff's Motion for Summary judgment should be denied.

1. There is at least a scintilla of evidence the fact finder must still address.
Froneberger v. Smith; S.C. App. August 28, 2013, No. 5168.

2. Plaintiff's theory of an easement by necessity are subsumed by other more fundamental theories such as the statute of limitations, statute of repose, laches and res judicata.

September 27, 2013
Summerville, South Carolina

By: 
Watts Law Firm, PA
Patrick R. Watts SCBar# 5975
Attorney for Defendant
P.O. Box 2046
Summerville, SC 29484
1-843-851-7050

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

CYNTHIA JACQUELINE JACKSON
MILLS,

C/A Number: 2012-CP-08-3013

Plaintiff,

v.

NOTICE OF MOTION AND MOTION
TO RECONSIDER FINAL ORDER, OR IN
THE ALTERNATIVE, FOR A NEW TRIAL

JANET LYNNE HUDSON, HENRY
RUSSELL JACKSON, and MILDRED
JACKSON HUDSON,

Defendants.

FILED
JUN 5 - 6 AM 10:57
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANTS, ABOVE-NAMED:

PLEASE TAKE NOTICE that fifteen (15) days after the service hereof or as soon thereafter as she may be heard, the Plaintiff, through her undersigned counsel, will move before the Honorable Dale E. Van Slambrook, Master-in-Equity for Berkeley County, pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, for an order reconsidering the Final Order in the above-captioned action, or in the alternative for a new trial.

This motion is made pursuant to the evidence and argument presented at trial, and upon such additional law and argument to be presented at the hearing on this motion. In further support of this motion, the Plaintiff would respectfully suggest error in one or more of the following particulars and/or request the following:

1. That the Court revise the second paragraph of the "Procedural Background" section of the Final Order to read as follows: "Plaintiff's second cause of action was for an easement by necessity across real properties of the Defendants Janet Lynne Hudson (TMS: 180-00-02-113) and/or Henry Russell Jackson (TMS: 180-00-02-017)." (*emphasis added*) These Plaintiff's request for relief was not limited to Ms. Hudson's property – the easement could have come

either from a portion of Ms. Hudson's property or a combination of portions of Ms. Hudson's and Mr. Jackson's properties. At all relevant times, the above-referenced two properties were actually one tract of land owned by the Defendants' father, Ruben Jackson, and it actually wasn't until 2011 (after the Plaintiff's 2006 lawsuit) that Ruben Jackson's tract was subdivided into the above-referenced two tracts.

2. That the Court revise the second paragraph of the "Findings of Fact" section of the Final Order in order to identify each of the out-conveyances from Thomas Jackson; the Plaintiff would suggest the following substitute language:

"By a succession of deeds during the early 1930's, Thomas Jackson conveyed out most of this property; the out-conveyances and their chronology are as follows:

- a) Deed from Tom Jackson to Edward Clarke, dated May 8, 1931, and recorded in Book A58, Page 169. This is the property presently comprising TMS Nos. 180-00-02-023, -024 and -099.
- b) Deed from Tom Jackson to J. W. Adkins, dated November 30, 1934, and recorded in Book A60, Page 80. This is the property presently comprising TMS No. 180-00-02-015.
- c) Deed from Thomas Jackson to Fred Jackson, dated September 21, 1935, and recorded in Book A60, Page 273. This is the property presently comprising TMS Nos. 180-00-02-018, -020 and -021.
- d) Deed from Thomas Jackson to Ruby Jackson, dated September 21, 1935, and recorded in Book A60, Page 274. This is the property presently comprising TMS Nos. 180-00-02-0017, -022 and -113.

The purpose of this request is simply to clarify in the record the various out-conveyances and the chronology of same. The location and timing of the various out-conveyances are significant in this case because they demonstrate that Plaintiff's tract (TMS: 180-00-02-016), which comprises the residual of the lands of Thomas Jackson: 1) would not have been accessible by Thomas Jackson during his lifetime from the South, East or West because Thomas Jackson never owned the property to the South of the Plaintiff's tract, and because Thomas Jackson had

already conveyed-away the properties to the East (to Edward Clarke) and West (to J.W. Adkins) of the Plaintiff's tract; 2) that access to the Plaintiff's tract would, therefore, have only been available to Thomas Jackson during his lifetime across his residual lands (which are the properties now owned by the Defendants); and, 3) that the Plaintiff's property is, in fact, landlocked.

3. That the Court revise the seventh paragraph of page 2 from the "Findings of Fact" section of the Final Order in order to clarify that the property acquired by the Plaintiff's father, John H. Jackson, by deed dated January 21, 1969, and recorded in Book A194, Page 79, consisted of all of the residual lands of Thomas Jackson, and to note that the grantors from the above-referenced deed into John H. Jackson, including the Defendants' predecessor-in-title Ruben Jackson, were the heirs of Thomas Jackson.

4. That the Court revise the second paragraph of page 3 from the "Findings of Fact" section of the Final Order in order to include: 1) that the Plaintiff testified that she accessed her property, both before and after the death of Ruben Jackson, from U.S. Highway 17-A thru the property that was subsequently adjudicated to be Ruben Jackson's property (which is the property now owned by the Defendants); and, 2) that the Defendant Henry Russell Jackson testified that the Plaintiff's father (John H. Jackson) regularly accessed and worked the property when it belonged to [?]Mr. John H. Jackson, _{Rub.} and that the Defendants' father (Ruben Jackson) and the Plaintiff's father (John H. Jackson) – who were brothers – regularly assisted each other in working their respective tracts.

5. That the Court revise the fourth paragraph of page 3 from the "Findings of Fact" section of the Final Order in order to clarify that the Plaintiff's theory in the 2006 lawsuit wasn't

simply based upon an after-the-fact calculation of acreages – the Plaintiff testified that she had always believed that she owned (as part of her father’s grant in the 1969 deed) the lower portion of the property subsequently adjudicated in the 2006 lawsuit to be Ruben Jackson’s property. The significance of this is that the present characterization from the Final Order suggests that the Plaintiff somehow discovered, in an after-the-fact manner, that she might have a claim to additional property and then brought the 2006 lawsuit to expand her lands. The reality, however, is that the Plaintiff (and her father before her) always assumed, believed *and used* the property that was the subject of the 2006 lawsuit as if it were part of her lands. In fact, as the Plaintiff testified to, her reason in bringing the 2006 lawsuit was that around 1997 or 1998, one or more of the Defendants placed a mobile home on the property Plaintiff believed to be hers and which she used to access her lands (essentially, the lower portion of present-day TMS: 180-00-02-113).

6. That the Court revise the second full paragraph of page 4 from the “Findings of Fact” section of the Final Order, and the first paragraph of page 4 from the “Conclusions of Law” section of the Final Order, in order to clarify that the Plaintiff made alternative arguments in support of two possible dates of severance.

First, the Plaintiff argued that the 2008 order (from the 2006 lawsuit) operated as the date of severance, based on the fact that 2008 order adjudicated (for the first time and, quite frankly, in a surprising manner) that the lands traditionally used to access the Plaintiff’s tract and previously believed by the Plaintiff to be part of her tract, were actually part of the lands conveyed to Ruben Jackson in 1935 or were subsequently acquired by the heirs of Ruben Jackson by adverse possession. The result in the 2008 order was surprising for a number of reasons. First, as the Plaintiff’s expert testified, because a plain reading of the two deeds in

question (the deed into the Defendants' father, Ruben Jackson, for three (3) acres and the deed into the Plaintiff's father, John H. Jackson, for two (2) acres, more or less...."being the remaining portion of [the lands of] Thomas Jackson") would suggest that the grant into Ruben Jackson contained approximately three (3) acres (certainly not the four (4) plus acres ultimately adjudicated to have been included in the 1935 deed to Ruben). There may, as the expert testified to, have been a question as to the exact location of the three acres, but not as to the quantity conveyed, based on the description contained in the deed to Ruben Jackson. Second, if we take the alternate theory upon which the 2008 order rests – adverse possession by the heirs of Ruben Jackson – please consider the following, which is supported by the testimony from this case: 1) The portion of property at issue in the 2006 lawsuit was historically vacant land. It wasn't until around 1997 or 1998 (less than 10 years before the filing of the 2006 lawsuit), when one or more of the Defendants placed a mobile home on a portion of the property, that any *exclusive*, physical occupation could have arguably begun – this is supported by the testimony presented in the present case, including that of the Defendant Henry Russell Jackson, who testified that John H. Jackson (the Plaintiff's father and predecessor-in-title) regularly worked the land in question; 2) the 2008 order fails to note a beginning date for the adverse possession and/or the exclusive acts constituting the adverse possession and/or the extent of the area adversely possessed. This is why the Plaintiff put forth as her first argument for the date of severance, that the 2008 order was the point that a person would first be on notice and have a clear adjudication of ownership for the disputed area (an area that the Plaintiff believed she owned up until the 2008 order), and therefore, the 2008 order is the first point when it became clear that the Plaintiff's tract was landlocked – this conclusion is also supported by the testimony of the Plaintiff's expert witness.

Secondly, the Plaintiff argued in the alternative that, if the 1935 deed into Ruben Jackson included all of the area of land in question, as determined by the 2008 order, then this conveyance may have been the moment of severance, which actually rendered the Plaintiff's tract landlocked and in need of an easement for ingress/egress. It is undisputed that the Plaintiff's tract and the tract conveyed to Ruben Jackson in the 1935 deed derived from the lands conveyed to Thomas Jackson in 1923. It is also undisputed that Thomas Jackson never owned the lands to the South of the Plaintiff's tract, and it is also undisputed that Thomas Jackson conveyed-out the lands to the East and West of the Plaintiff's tract during his lifetime. It is further undisputed that prior to the 1935 deed to Ruben Jackson, Thomas Jackson would have had access to the area of his lands now comprising the Plaintiff's tract, through the lands that were conveyed to Ruben Jackson in 1935. Finally, after the conveyance from Thomas Jackson to Ruben Jackson in 1935, the residual lands of Thomas Jackson (the Plaintiff's tract) would have been rendered absolutely landlocked, with no access to a public right-of-way.

However, even if the actual point of severance was the 1935 deed to Ruben Jackson, it is important to remember that, at the very least, the vague and inconsistent language used to describe the property conveyed in this deed, coupled with the fact that the Plaintiff believed the property in question was part of her lands and used the property to access her lands, demonstrates that title to the property at issue in the 2006 lawsuit was questionable and disputed, at best, and that the Plaintiff's actions have been reasonable, under the circumstances.

Finally, the Will of Ruben Jackson identified boundaries to the West, North and East but refrained from a reference to the South where the Plaintiff testified her Father, her Uncle and the neighbors all agreed that access to the Plaintiff's property had always been derived.

7. That the Court reconsider the apparent conclusion of law in the block quote at the bottom of page 4 of the Final Order, stating "Severance of title means that title to a larger tract was 'severed' *by conveyance...*" (*emphasis added*). While the Plaintiff certainly acknowledges that a conveyance can (and often does) result in a severance of title, the Plaintiff does not believe that all severances must necessarily be the result of a conveyance. A "severance" is defined as "[T]he act of cutting off; the state of being cut off." *Black's Law Dictionary*, (8th ed. 2004). Plaintiff would suggest error in that the Court appears to be placing undue emphasis on the notion that a severance can only result from a conveyance, and therefore, improperly concluding that the 2008 order cannot effect a severance. The Plaintiff would argue that the definition of severance is not so narrowly confined as to exclude severances resulting from operations of law. *See, e.g., Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (S.C., 1941) (stating, "So, where a part of a man's land is taken from him by operation of law, as under a sale by execution, leaving him no way of egress, the law will allow him one from necessity.")

8. That the Court reconsider the apparent conclusion of law in the block quote at the bottom of page 4 of the Final Order and continuing onto page five of the Final Order, stating "The necessity by which a person derives a right of way, is *when one person sells to another lands enclosed on all sides by other lands. Here[,] the law imposes an obligation on the seller to allow the purchaser a right of way over his adjacent land.*" (*emphasis added*). While the Plaintiff certainly acknowledges that, in an appropriate case, an easement by necessity may arise in favor of a grantee over the lands of her grantor, it is equally possible for an easement by necessity to arise in favor of a grantor over the lands of her grantee. *See, e.g., Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (S.C., 1941) (stating, "A right-of-way from necessity, is where a

man having several tracts of land, sells one which is surrounded by the others, having no way of ingress and egress but through one of those reserved. So, even if he reserves the tract in the middle for himself, he is entitled to a way through necessity.") The Plaintiff would suggest error to the extent that the Court is suggesting that an easement by necessity may only arise in favor of a grantee over the lands of her grantor.

9. That the Court reconsider the apparent findings of fact and/or conclusion of law in the first three full paragraphs of page 5 of the Final Order, which essentially continues the argument that an order (in this case the 2008 order) may not effect a severance, and also fails to acknowledge that the Plaintiff also argued in the alternative that the 1935 deed to Ruben Jackson may have been the actual point of severance. As to the issue of the 2008 order operating as a point of severance, please see Plaintiff's arguments in paragraphs 6 and 7, above. As to the issue of Plaintiff's alternative argument that the 1935 deed to Ruben Jackson may have been the actual point of severance, please see Plaintiff's argument in paragraph 6, above.

10. That the Court reconsider the apparent conclusion of law in the fourth full paragraph of page 5 of the Final Order, stating that "Plaintiff's reliance upon a strict acreage count in a deed from 1935 is unfounded." The Plaintiff's expert testified that, although he was not and had never been a surveyor, he has examined numerous titles and deeds from 1935 and older, and that he believed it was certainly possible to accurately describe property in 1935, using the tools available from that time. He also noted that the real problem, in his opinion, with the descriptions was not due to the accuracy of the surveying instruments available in 1935, but rather with the fact that the descriptions and conveyances appear to have been made without the benefit of a survey; instead, the descriptions for the various out-conveyances for the lands of

Thomas Jackson were made by reference to specific acreage amounts and by incomplete and inconsistent references to the names of adjacent landowners. For example, with regard to the 1935 deed to Ruben Jackson, the Plaintiff's expert noted that the deed recites that the tract being conveyed was bounded on the North by lands of Fred Jackson, on the East by lands of Barker (not Branch Road), on the West by lands of Mizzell (not U.S. Hwy 17-A), and on the South by lands of Adkins (not Adkins, residual lands of Thomas Jackson, and Clarke). The Plaintiff's expert further testified that, in his opinion, based on the available information from the public record and considering the inconsistencies in the "adjacent" references, the operational effect of the deed to Ruben Jackson was to convey three (3) acres of land, beginning at the line between the lands of Fred Jackson to the North and extending southward between Branch Road to the East and U.S. Hwy 17-A to the West until such point as three (3) acres would be had.

11. That the Court reconsider the apparent conclusion of law in the block quote at the bottom of page 5 of the Final Order, stating "[U]nder the rules for determining disputed boundaries 'the quantity of land named in the deed is ordinarily one of the lowest in the scale of importance.'" Plaintiff would suggest error in that the Court appears to be misapplying the principles espoused in the cited cases. The principle from the cited cases is not that conveyance by quantity of acreage is without effect; the issue is that, in comparison to other available means of describing the property, a description by quantity will generally yield.¹ Plaintiff's argument is that the description of property at issue in this case does not come down to a comparison between two competing means of describing the property (because the available "adjacent

¹ However, this is not always the case. As stated immediately after the language from the Holden case relied upon by the Court, "But in every one of the cases recognizing these general rules,...the courts have invariably also recognized the doctrine that these general rules are not inflexible, but may be modified by the circumstances of the case." Holden v. Cantrell, 100 S.C. 265, 84 S.E. 826 (S.C., 1915)

boundary” references are facially incorrect and/or unreliable). Therefore, the issue here becomes how to interpret a description of property where the only information available is quantity of acreage conveyed, coupled with limited “adjacent boundary” references. Here, it is undisputed that the property conveyed to Ruben Jackson was three (3) acres, bounded to the North by lands of Fred Jackson – all three of the other “adjacent boundary” references are facially inconsistent.

In any event, the Plaintiff’s purpose in noting the uncertainties and inconsistencies in the 1935 deed to Ruben Jackson is not to re-litigate the issue of ownership of the land at issue in the 2006 lawsuit; the Plaintiff’s purpose is to show that, due to the inconsistencies in the 1935 deed, coupled with the fact that that the Plaintiff had historically accessed her lands using the property in question in the 2006 lawsuit, it wasn’t until the 2008 order was issued, that a reasonable person would have been on notice that Ruben Jackson’s lands actually included four plus acres and that the Plaintiff’s tract was landlocked.

12. That the Court reconsider the apparent conclusion of law in the second paragraph of page 6 of the Final Order, wherein the Court finds: 1) unity of title for the properties in question, in Thomas Jackson, prior to the 1935 deed from Thomas Jackson to Ruben Jackson; 2) severance of title as a result of the 1935 deed from Thomas Jackson to Ruben Jackson, with Thomas Jackson retaining title to the “interior” piece; and, 3) that the 1935 severance rendered the “interior” piece retained by Thomas Jackson landlocked, where it had previously not been. Nevertheless, the Court concludes that the Plaintiff failed to prove necessity. The Plaintiff suggests error in that: 1) The Court appears to assume that an easement by necessity may only arise in favor of a landlocked grantee over the lands of her grantor, but not in favor of a landlocked grantor over the lands of her grantee. *See, e.g., Poole v. Edwards*, 197 S.C. 280, 15

S.E.2d 349 (S.C., 1941); 2) The Court appears to neglect that the element of necessity may be implied as a result of the grants in question, which in this case, Plaintiff would urge demonstrate an implied, reserved easement was intended, for otherwise, the residual lands retained by Thomas Jackson would be rendered inaccessible and useless to him; 3) that the Plaintiff did testify without objection that the reason for the conveyance by the heirs of Thomas Jackson to her father, John H. Jackson, of the residual lands of Thomas Jackson was because this property was intended for her father by her grand-father, Thomas Jackson, which suggests that he intended to retain access to the property; 4) the Court's suggestion that there are no geographical impediments to the Plaintiff seeking access for her property across other adjacent properties is misplaced – unity and severance only existed in the property of the Defendants herein. *not to south*

13. That the Court reconsider the apparent findings of fact and/or conclusion of law in the third paragraph of page 6 of the Final Order, and also the block quote at the top of page 7 of the Final Order, wherein the Court concludes that the Plaintiff's case is barred by *res judicata*, as a result of the 2006 lawsuit to try the issue of title to the disputed lands. The Plaintiff suggests error in the following: First, the Plaintiff would note to the Court that the Defendants raised the issue of *res judicata* at the summary judgment hearing in this case, which was argued before the Honorable Robert E. Watson, who was the previous Master-in-Equity and also the trial judge for the 2006 lawsuit. Based on the transcript from the summary judgment hearing, which is part of the record in this case, Master Watson responded to the *res judicata* argument at summary judgment by denying that access was an issue in the 2006 lawsuit. See, Trans. Pgs. 25-26. Plaintiff would argue that, because Master Watson was the trial judge in the 2006 lawsuit, deference should be given to his notes and conclusions at summary judgment determining that

access was not at issue in the 2006 lawsuit and denying *res judicata*. Secondly, the Plaintiff would argue that title, not access, was the issue and subject matter of the 2006 lawsuit, and thus *res judicata* is not applicable to the present action, wherein Plaintiff seeks to establish an easement by necessity for access to her property, as a result of the ruling from the 2006 lawsuit. Essentially, the issue of access was neither obvious (because the Plaintiff had always previously been able to access her property), nor ripe at the time of the 2006 lawsuit.

14. That the Court reconsider the entirety of the Final Order, and issue a new order consistent with the requests, suggestions and/or arguments set forth in this motion, and issue judgment in favor of the Plaintiff and against the Defendants, awarding the Plaintiff an easement on the theory of necessity over the lands of the Defendant Janet Lynne Hudson and/or the Defendant Henry Russell Jackson, in order to establish ingress/egress from U.S. Highway 17-A to the Plaintiff's tract; that the Court either determine the location of the easement based on the trial record, or that the Court conduct a new and/or supplemental hearing in order to determine the exact location of the easement.

For the reasons set forth above, and upon such additional law and argument to be presented at the hearing on this motion, the Plaintiff respectfully requests the Court to reconsider the Final Order in this matter, or in the alternative, to grant a new trial.

Respectfully Submitted,



Christopher S. Inglese, Esq.
Inglese & Associates, LLC
Post Office Box 21796
Charleston, South Carolina 29413
Telephone: (843) 277-9785
Fax: (843) 353-2523

ATTORNEY FOR THE PLAINTIFF

May 6, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) THE NINTH JUDICIAL CIRCUIT

CYNTHIA JACQUELINE JACKSON)
MILLS,)
)
Plaintiff,)
)
v.) C/A Number
) 2012-CP-08-3013
JANET LYNNE HUDSON, HENRY)
RUSSELL JACKSON, and MILDRED)
JACKSON HUDSON,)
)
Defendants.)

PROCEEDINGS BEFORE THE HONORABLE ROBERT E. WATSON

DATE TAKEN: Thursday, October 3, 2013
TIME: 9:37 a.m.
PLACE: Berkeley County Courthouse
300-B California Avenue
Moncks Corner, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

Page 2 1 APPEARANCES 2 REPRESENTING THE PLAINTIFF: 3 CHRISTOPHER INGLESE, ESQUIRE 4 P.O. Box 21796 5 Charleston, South Carolina 29413 6 chris@ingleselaw.info 7 REPRESENTING THE DEFENDANTS: 8 PATRICK R. WATTS, ESQUIRE 9 Watts Law Firm, P.A. 10 Post Office Box 2046 11 Summerville, South Carolina 29484 12 ALSO PRESENT: 13 Christine Williams, Esquire 14 Charles Feeley, Esquire 15 Cynthia Jacqueline Jackson Mills 16 17 18 19 20 21 22 23 24 25	Page 4 1 the plaintiff regarding their motion for summary 2 judgment. 3 MR. INGLESE: Thank you. 4 May it please the Court, your Honor, the 5 issue of an easement by necessity and the elements 6 relative to that are unity of title, severance of 7 title, and necessity. Those are the elements that, 8 absent any material factual issue, are matters of law 9 that can be decided at summary judgment. I don't want 10 to use the Court's time going into the standards for 11 summary judgment. I'm sure you're familiar with those. 12 As far as unity of title, unity of title was 13 admitted to in the defendants' responses to the 14 plaintiff's request to admit in question number one, 15 where it was asked, Admit that the disputed parcel and 16 the plaintiff's parcel 016 -- so 016 on the screen is 17 the -- is the plaintiff's parcel. You can see from the 18 image on the screen that it's landlocked. And in our 19 pleadings and for today, we refer to the northern 20 adjacent parcel identified on the screen as 1800002113 21 as the disputed parcel and also as the servient -- the 22 proposed servient tract. 23 These two parcels were part of the same 24 tract that Thomas Jackson owned at one time, going back 25 to 1923, I believe. It was part of what at that time
Page 3 1 (The proceedings commenced at 9:37 a.m.) 2 THE COURT: This is case number 3 2012-CP-08-3013, Cynthia Mills vs. Janet Hudson, Henry 4 Jackson, and Mildred Hudson. We're here on motion for 5 summary judgment; is that correct, sir? 6 MR. INGLESE: Yes, your Honor. 7 THE COURT: And the issue in that motion for 8 summary judgment would be an easement by necessity; is 9 that correct? 10 MR. INGLESE: That's correct, your Honor. 11 THE COURT: Have we identified ourselves for 12 the record, who's representing who? Let's do that, 13 please. 14 MR. INGLESE: Good morning, your Honor. My 15 name is Christopher Inglese, representing my client, 16 Miss Cynthia Mills, who's present. Christine Williams, 17 a lawyer who's been assisting on the case. We're also 18 here with Charles Feeley, who is the title -- he's the 19 lawyer in South Carolina that did the title work on the 20 parcels in question. 21 THE COURT: All right. 22 MR. WATTS: And, your Honor, I'm Patrick 23 Watts. I'm here representing all of the defendants, 24 all three of the defendants. 25 THE COURT: Okay. I'll be glad to hear from	Page 5 1 was believed to be a 10.3-acre tract. And I can 2 outline it on the screen, if you'd like me to, your 3 Honor. Essentially, this area to the north running 4 east here and to the south along here was Mr. Jackson's 5 estate. 6 Over the course of time, parcels were 7 conveyed out. First, in 1931 these parcels here 8 immediately adjacent to 016 were parceled out by 9 Mr. Jackson. And in 1934, 015 was the next parcel to 10 be severed. And in 1935, a three-acre tract to the 11 north of the plaintiff's property was severed out. 12 Now, what happened at that point, this was 13 the final severance regarding this easement by 14 necessity issue. And the deed identifies three acres 15 being conveyed in that transaction in 1935. However, 16 that's mathematically impossible. Essentially, what 17 happened is that this 10.3-acre turned out to be 18 approximately 11.3 acres, 11.2, 11.3. There was about 19 an acre of residual lands that were never accounted 20 for; and until the 2008 action in this court, that was 21 a quiet title action that Miss Mills brought here 22 because of the dispute about title and ownership 23 interest in this residual tract that never met -- never 24 really was identified. 25 So, when Mr. Jackson severed and conveyed

Page 6 1 out that parcel, the defendant would like you to 2 believe, and this is really inconceivable, that he 3 landlocked himself out. It really has no consequence 4 in the legal matter, but he would like you to believe 5 that he did that on purpose or somehow created this 6 landlock situation. 7 The more realistic thing that happened is 8 that he realized at that point that there was some 9 residual, and knowing that he had already conveyed out 10 the parcel to the west and the parcels to the east, 11 that that residual was access to his parcel. 12 Fast forward to 2008. There was an order 13 from your Honor that quieted title and granted 14 ownership interest to the defendants at that time, who 15 are the same defendants in the easement action today. 16 Our position is that unity of title is 17 clear. The title work by Mr. Farley -- by Mr. Feeley 18 establishes unity of title. The admission from the 19 defendants establish unity of title. So we don't 20 believe that that issue is -- that there is any issue 21 with unity of title. 22 The next element is the severance of title. 23 And as I started to explain in that introduction, the 24 sequence of severances, the defendant would like you to 25 believe that 1935, September of 1935, was the	Page 8 1 Another element of necessity is that it must 2 exist at the time of the severance or the conveyance, 3 and it cannot be imposed by the person seeking the 4 easement. 5 The defendants' position on this is a little 6 misguided. The fact of the matter is, the case law is 7 not entirely clear on the factual -- on the facts of 8 this case. It's not -- There's no perfect case out 9 there for these facts. And, essentially -- 10 essentially, the self-imposed necessity that the 11 defendant would like to use is addressing situations 12 where a grantee of property -- and I would refer to 13 Merrimon v. McCain. There are three cases, and I'll 14 hand them up, your Honor. But, essentially, those 15 self-imposed necessities are dealing with subsequent 16 conduct of a grantee in which they have necessitated 17 the need for an easement and argued an easement by 18 necessity, but their conduct in the Merrimon case, the 19 person seeking the easement built a house that blocked 20 the access, and the Court said, You can't create your 21 own need for access by building a house and then burden 22 some adjacent property because of that. That's dealing 23 with the grantee. 24 In this case, we're dealing with the 25 grantor's conduct.
Page 7 1 severance. Our position is that 2008 was the actual 2 severance. Regardless, it's immaterial. We believe it 3 to be a legal question, a legal conclusion as to when 4 the severance happened. But even if it's a factual 5 question for the Court, it's immaterial because the 6 issue is: Was there a severance? And, yes, there was. 7 It was either in 1935, as Defendant has said; and in 8 their return, they actually said there was a severance 9 conclusively in 1935. That's their return. That's in 10 the record. So we don't believe severance is at issue 11 either. It may be an issue for the Court to make the 12 determination. We don't think it's material to the 13 element of severance. A severance had to have 14 happened. 15 The final issue has a little more depth to 16 it, your Honor. It's the necessity issue. And there 17 are many cases on the necessity issue. Graham v. 18 Causey is one that we've referred to in our motion, and 19 we would rely on that case as well as a number of other 20 cases. 21 Essentially, the necessity standard in South 22 Carolina law is that a moving party would have to 23 demonstrate a reasonable necessity, not an absolute 24 necessity. In this case, we have demonstrated an 25 absolute necessity by virtue of the landlocked parcel.	Page 9 1 Additionally, the Clemson case -- the 2 Clemson case, the person seeking the easement sought to 3 redevelop their property. That redevelopment required 4 a larger drainage easement. That larger drainage 5 easement they argued was a necessity, but the Court 6 again said, You can't create your own necessity by 7 pursuing a redevelopment. Again, the grantee in that 8 case -- the conduct of the grantee is what's being 9 argued. 10 There's a third interesting case that's more 11 recent, 2012 case, which is the -- this is the Paine v. 12 CSX case. This is a very interesting case, and we 13 would recommend a close look at it. This is a case 14 that dates back to some conveyances in 1878, I believe. 15 And the grantor in that case conveyed away the lands 16 adjacent on three sides. The fourth side was Savannah 17 River. And those conveyances essentially landlocked 18 the grantor's property, except that's not what the 19 Court said. The Court said that in 1878 it was 20 reasonable to conceive that access by the river was 21 sufficient access, and so, instead of saying, You 22 created your own hardship, which the Court of Appeals 23 could have said, they said, At the time of the 24 conveyance, you still had a reasonable access, absent 25 some environmental reason that you couldn't access it

Page 10 1 from the Savannah River, and they said the parties 2 never showed that. 3 So, again, all of these self-imposed 4 necessity cases deal with subsequent grantee conduct. 5 There's no case directly on point with a grantor who 6 would have conveyed away property to landlock himself. 7 And, really, that is -- it's just an inconceivable, 8 illogical position to take. No land -- I mean, the 9 reason why there's no case law on it is because no land 10 owner would conceivably grant away and landlock his own 11 parcel. So it's just an unreasonable position that the 12 defendant has taken on the necessity. Is absolute 13 necessity sufficient for showing of reasonable 14 necessity? I think the standards of equity and the 15 policies of the state is that this Court has the 16 authority to impose an easement by necessity. And, in 17 fact, it's exactly that policy that gives rise to the 18 doctrine of implied easement by necessity. It's 19 exactly this kind of situation, when either by mistake 20 or because the deed and the plat, like we have in this 21 case, doesn't address access, that's exactly why the 22 doctrine of implied easement by necessity exists and 23 authorizes this court to grant that, because, without 24 it, my client is left with an impossible way to use and 25 quietly enjoy her property, which the policy of the	Page 12 1 MR. INGLESE: Prior to the court's order. 2 Well, obviously, I can't answer that question. I mean, 3 there was no clear title to the property. That's why 4 there was a quiet title action filed here. The Court's 5 finding that the defense -- that the defendants have 6 ownership of that property didn't identify a date at 7 which ownership in the defendants vested. So we don't 8 know. And the fact of the matter is between 1923, 9 really, when the estate was established in Thomas 10 Jackson's name, or 1935, between that time and 2008, 11 the fact of the matter is that ownership interest could 12 have swung based on adverse possession elements amongst 13 a variety of people. But we don't know that. We don't 14 know. Those facts weren't litigated. 15 It doesn't really matter in this case 16 because the unity of title goes back to Thomas Jackson. 17 When he conveyed to Reuben Jackson in 1935, you could 18 find that that was the severance that's relevant to 19 this case, or you could find that there was cloudy 20 title and that the actual severance was based on your 21 court order in 2008. It doesn't really matter because 22 the severance issue is: Were they part of the same 23 title? Which they were. And were they severed at some 24 time? And the answer is yes, they were severed. 25 So I don't know, you know. If that's a
Page 11 1 state encourages us to allow landowners to do. 2 I'll reserve the rest of the time for 3 rebuttal, your Honor. 4 THE COURT: Thank you. 5 Mr. Watts. 6 MR. WATTS: I've still got some questions 7 about Mr. Inglese's argument. We're focusing on 8 March 2008, when this Court issued the order in the 9 previous -- in Miss Mills' previous case. So what I'm 10 unclear about is: Who had unity of title in 11 March 2008? Who owned the servient and the dominant 12 estates in March of 2008? Can Mr. Inglese help me with 13 that? 14 THE COURT: Well, is that going to be a 15 material question of fact, material issue of fact for 16 me to determine, or is that something that can be 17 explained? 18 MR. WATTS: I think it's a matter of law, 19 and I think it's a matter of what Mr. Inglese has been 20 trying to explain today. 21 THE COURT: Would you like to respond? 22 MR. INGLESE: Sure. I think the question 23 was who owned the property as a result of the court 24 order or prior to the -- 25 MR. WATTS: Prior to the court order.	Page 13 1 question of law, it's not being litigated here, and 2 it's really immaterial to the element of severance. 3 MR. WATTS: Well, I disagree. 4 THE COURT: So, Mr. Watts, are you 5 disagreeing that -- that there's no unity of title 6 between the parcels involved in this land? I mean, 7 that's one of the elements, if I'm not mistaken, for 8 easement by assessment is unity of title. And the 9 argument has been made that you have not disagreed with 10 that. Are you disagreeing with that now? 11 MR. WATTS: Well, that's the question I 12 have. Was there unity of title in March of 2008 before 13 you issued your order or were these two parcels already 14 severed and separate and owned by separate people? 15 That's an issue of fact which would need to be 16 litigated. 17 But let's assume, for the sake of argument, 18 that Ms. Mills owned that piece of property, the strip 19 of land just adjacent to hers, that would have 20 permitted her access to Highway 17. Under the -- the 21 doctrine of easement by necessity says, Where a 22 person -- and this is what we're arguing and this is 23 what this motion is about. Where a person is at one 24 time the owner of the servient and dominant tenement -- 25 just one tract -- and conveys a part thereof to

Page 14 1 another, it is his intention also to convey that which 2 is reasonably and actually necessary for the enjoyment 3 of the land conveyed. Now, I'm quoting that from 4 <i>Graham v. Causey</i>, which is the basis of -- which is a 5 case that Mr. Inglese has included in his argument. 6 So what did the March 2008 order from this 7 court convey? What property did it convey? 8 Mr. Inglese argues that it conveyed a strip of land 9 just north and adjacent to Ms. Mills' property, the one 10 that's outlined in red there, and conveyed it to my 11 clients or my clients' mother is Lurline Jackson. But 12 that property has access. That property touches on 13 Highway 17. 14 So if you again refer to the doctrine, the 15 point of the doctrine is to provide the conveyed 16 property access. So the conveyed property by your 17 order has access. So the doctrine doesn't apply. The 18 whole point of the doctrine is to provide the conveyed 19 property access across the grantor's land, and if the 20 conveyed property is that strip of land that's the 21 disputed property in this case, then the doctrine 22 doesn't apply. 23 THE COURT: All right. Gentlemen, help me 24 out. In the 2008 case, I can't see the TMS number on 25 it. I see the red outline. That which is outlined in	Page 16 1 there's no case law directly on point is because the 2 doctrine is saying, When a grantor conveys land, that 3 what he conveys must preserve some access to which the 4 grantee can get to and from their land. 5 So in this instance, what the defendant 6 would like you to believe is that the grantor granted 7 away his access to the land. And the reason why 8 there's no case law on that is because it's 9 inconceivable. Nobody would do that. There's an 10 absurdity to that argument. 11 THE COURT: All right. Hold on. 12 MR. WATTS: Your Honor, there's no case law 13 on it because the doctrine is to protect the grantee 14 and protect the landlocked property. If we -- if we 15 assume, for the sake of argument, that your March 2008 16 order was a conveyance, then it conveyed out property 17 that had access. And so the doctrine of easement by 18 necessity doesn't apply in this case. 19 MR. INGLESE: The Court ordered conveyance 20 and the conduct of the grantor who voluntarily conveys 21 property is not -- should not be treated in the court 22 of equity similarly. 23 MR. WATTS: Let me ask Mr. Inglese this 24 about this Court's order. Was it really a conveyance 25 at all of title to property? Again, the doctrine talks
Page 15 1 red was not involved in the 2008 case, is that right, 2 or am I wrong? 3 MR. INGLESE: That's correct. That was not 4 a quiet title action, your Honor. What is represented 5 here is a consequence of your order where they filed a 6 new plat, consistent with your order, and then they 7 adjusted the property lines so that the frontages are 8 equal. What was in dispute was approximately one acre. 9 THE COURT: Which is north of her property; 10 is that correct? 11 MR. INGLESE: Which is north of her 12 property. 13 THE COURT: Okay. 14 MR. INGLESE: And which we believe was the 15 residual of the 10.3 acres that was actually 16 approximately 11.3 acres. And I think that Mr. Watts' 17 tunnel vision on the purpose of the doctrine isn't 18 accurate. I think there's lots of reasons for the 19 doctrine, one of them being to ensure access to people, 20 to ensure equitable solutions for this type of 21 situation. And I don't disagree that the case law 22 addresses grantee's subsequent conduct with regard to 23 the necessity element, and I don't disagree that the 24 doctrine oftentimes, not always, but oftentimes looks 25 at the conveyance, the land being conveyed. That's why	Page 17 1 about the unity of title being severed, and that's 2 being severed by a conveyance of title. So did this 3 Court's order include a legal description of the 4 property? Did it identify a grantee? Did it recite 5 consideration? Was it executed in the presence of two 6 witnesses? Did those two witnesses sign the order? 7 Does it include the words of grant, bargain and sale? 8 Does it have a habendum clause? Did the judge -- did 9 you, your Honor, actually intend to transfer title to 10 the disputed area? He can't -- you know, a lot of 11 these questions have to be answered no; and, therefore, 12 this Court's order is not a conveyance; it's not a 13 deed; it doesn't transfer title to any piece of 14 property. 15 THE COURT: All right. Anything else? 16 MR. INGLESE: It's irrelevant, your Honor. 17 And it's a legal conclusion whether or not your order 18 conveyed anything. And I'm certainly -- I'll leave 19 that to you to decide. But, regardless, their response 20 identifies 1935 as the severance. That's sufficient to 21 meet the element of severance. They have admitted 22 unity of title. The public record and Mr. Feeley's 23 work demonstrates unity of title. All these questions 24 are obfuscating the real issue, which is equitable 25 relief for access to and quiet enjoyment and use of a

Page 18 1 landowner's property. And that's why we're here. And 2 law and policy, case law, and the facts all support 3 some relief for my client. 4 There's no reason to continue this 5 litigation, continue expending resources on land whose 6 value is -- you know, if we have to continue, the value 7 of the land is hardly going to -- my client is hardly 8 going to get any return after spending all this money 9 on litigation. 10 And so we're here because we need equitable 11 relief. And there's plenty in the law to support a 12 granting of an easement. This was the last severance 13 in time, whether it was '35 or 2008. Mr. Watts' 14 questions on whether the court order was a conveyance, 15 our position is yes, it was, that a court order 16 quieting a title is essentially giving an ownership 17 interest, where before that it was questionable where 18 the ownership interest was. But it doesn't matter. 19 Regardless, it's irrelevant because the severance issue 20 is met whether you take their position in 1935 it was 21 severed or our position. It doesn't matter. It's 22 immaterial. 23 MR. WATTS: So there's a factual issue 24 that's in dispute. Was the judge's order March 2008 an 25 actual conveyance of title?	Page 20 1 roads on each end, Highway 17 and Branch Road. So, 2 again, the doctrine doesn't apply in this case because 3 we're talking -- the doctrine protects granted 4 property; it protects landlocked property. Mr. Inglese 5 recommended Paine v. CSX to you. Well, there's a nice 6 quote in Paine v. CSX. It cites Turnbull, the case 7 Turnbull v. Rivers, from 1825. "The necessity by which 8 a person derives a right-of-way is when one person 9 sells to another lands enclosed on all sides by other 10 lands. Here the law imposes an obligation on the 11 seller to allow the purchaser a right-of-way over his 12 adjacent land." So, if Thomas Jackson conveyed those 13 three acres to Reuben in 1935, Reuben's property had 14 access, so the doctrine of necessity doesn't apply. If 15 this Court transferred title to the disputed area to my 16 defendants' mother in 2008, then the doctrine here 17 doesn't apply because the property, the subject 18 property, has access. 19 Now, I agree that Ms. Mills' property is 20 landlocked, but I also insist that Mr. Thomas Jackson, 21 her granddaddy, did that to himself when he conveyed 22 out all the land around him and did not reserve an 23 access easement. He conveyed out everything except for 24 that red square right there. And then he died in 1947. 25 That happens to be a voluntary -- involuntary
Page 19 1 MR. INGLESE: That's a legal conclusion, 2 your Honor. It's a factual issue. And, at best, it's 3 a mixed issue. 4 MR. WATTS: If you read the statute, there 5 are specific factual elements that have to be in a deed 6 to make the transfer of title. So were those elements 7 in this order or not? That's a factual issue. 8 Now, it sounds like Mr. Inglese is 9 suggesting that the severance was in 1935, 10 September 1935, when Thomas Jackson conveyed 11 three acres to Reuben Jackson. And, there again -- 12 MR. INGLESE: I don't want my silence to be 13 interpreted as accepting those words being put in my 14 mouth. 15 THE COURT: He's arguing his position for 16 denial of the summary judgment, so let him finish his 17 argument, then I'll hear from you. 18 MR. WATTS: Okay. Well, if the severance 19 wasn't in March of 2008, then the records would 20 indicate -- the public records would indicate that the 21 severance was September 1935, when Mr. Jackson conveyed 22 out three acres to his brother, Reuben. There again, 23 if we're here on the doctrine of easement by necessity, 24 that conveyance out by Thomas to Reuben was of land 25 that had access. It touched -- actually touched two	Page 21 1 conveyance, so we can't fault him for that. But, 2 again, if you -- if you're looking for an easement to 3 access that property, his passing in 1947 doesn't help 4 either because he didn't have any additional property 5 over which to grant an easement. That was all that he 6 had left. So, again, the doctrine of easement by 7 necessity doesn't apply even to that piece of property. 8 THE COURT: All right, sir. Anything else? 9 MR. INGLESE: I just -- I apologize for 10 interrupting. I'll just reiterate. I didn't want my 11 silence to be construed as accepting the proposition 12 that that was our position on anything. 13 I just would reiterate that the appropriate 14 place for this easement is through what was disputed 15 land; it was disputed until 2008. There was no clear 16 title on it. The Court's order, whether it was a 17 conveyance or not, is irrelevant. It was -- this was a 18 residual tract, and title was not clear. 19 My client went through all the appropriate 20 channels to gain clear title on 016. She paid off the 21 other heirs, and she did what she had to do to gain 22 clear title on her property. 23 THE COURT: Where is that evidence in your 24 motion for summary judgment? 25 MR. INGLESE: I believe it's in the title

Page 22	Page 24
1 work, but I'm not sure. There was -- when her father 2 deceased, 016 became heirs' property, and Miss Mills 3 had to -- in 1983 the heirs passed -- the heirs signed 4 over deed to Miss Mills, so she was the sole possessor 5 of that property. So this isn't like -- you know, 6 she's been through a lot to gain ownership, and then in 7 2006 filed the quiet title because there was this 8 residual tract that was unaccounted for. And 9 Mr. Watts' reading of the law on protecting the grantee 10 is -- that's one way -- that's one way the courts have 11 applied the doctrine; it's just one way. And I believe 12 it's within your discretion to apply it in this way, 13 when there's no subsequent conduct of Miss Mills or any 14 of the heirs of Mr. Jackson that created this. And 15 there is an absurdity -- there's no demonstration of a 16 landowner ever landlocking themselves, and there's 17 nothing the defendant has provided to demonstrate that. 18 It's inconceivable. And the reason why that's not what 19 happened here is because Mr. Jackson realized at the 20 end of parceling out all those acres that this 21 landlocked piece had access through a residual, or, in 22 the alternative, he was parceling out to family members 23 and never could have conceived that he would actually 24 be landlocked. And the doctrine is available to you 25 when the deeds and the plats are insufficient to	1 Mills. 2 MR. WATTS: The doctrine is plain and clear, 3 and it's there to protect the grantee, not the grantor. 4 We've got -- Mr. Inglese has quoted Graham v. Causey in 5 his motion. In my return, I quote Boyd v. BellSouth 6 Telephone Telegraph Company. The doctrine of easement 7 by necessity is based upon the presumption that the 8 grantor intended the grantee of a landlocked parcel to 9 have access to his property. And then, as I quoted in 10 Paine v. CSX, the necessity by which a person derives a 11 right-of-way is when one person sells to another lands 12 enclosed on all sides by other lands. 13 So the only landlocked property here is the 14 grantor's property. That was Thomas Jackson's 15 property, which ultimately devolved down to Ms. Mills. 16 So she's not entitled to an easement by necessity 17 because the doctrine doesn't recognize the grantor as 18 being entitled to an easement by necessity. That's -- 19 Let me go on to quote a couple of lines out of this 20 Court's order March 2008. 21 Mr. Inglese/Ms. Mills is suggesting that the 22 disputed land was in dispute. It was not. And this 23 Court found as much in its order. The lands in 24 question are part and parcel TMS number 1800002017, 25 lands of Miss Lurline Jackson. The finding is based
Page 23	Page 25
1 establish an easement. 2 THE COURT: I'm not saying the doctrine is 3 available to me or not available. I'm not determining 4 that right now. But I've heard both of you argue 5 things, and I just want to know how it's supported in 6 your motion for summary judgment. And you just argued 7 to me that some things that Mr. Jackson had done, that 8 it was inconceivable he would do those. Well, where 9 are some affidavits or something in this, what you've 10 given me for summary judgment, to allow me to determine 11 that? 12 MR. INGLESE: To determine what 13 Mr. Jackson's thoughts were at the time of 1935? 14 THE COURT: Well, you're saying it was 15 inconceivable that he would landlock himself. Where 16 are the facts of that? 17 MR. INGLESE: I think it's demonstrated -- 18 We're just rebutting the defendants' position that -- 19 you know, the defendants' position is he purposely 20 landlocked himself, and our answer to that is that's 21 impossible, it's inconceivable. You know, there's not 22 a landowner in the history of property law that's ever 23 done that, and there's no case that gives us a clear 24 guidance on it, but the doctrine is available to you, 25 to this Court, to provide an equitable relief to Miss	1 upon the testimony of all the witnesses and the deeds 2 and documents examined by the Court. The Court finds 3 that, even absent the chain of title, the lands in 4 question, which still belong to Defendant Lurline 5 Jackson, by virtue of her continuous, hostile to the 6 claims of the plaintiff, open, adverse, notorious and 7 exclusive use, occupation and/or possession of the land 8 for a time of -- for a period of time exceeding that 9 required for a finding of ownership by adverse 10 possession. 11 So after the -- I mean, after the trial of 12 the 2006 case and after all the evidence was in, this 13 Court found that Miss Lurline Jackson had owned that 14 property since 1935 or her -- or she and her husband 15 had owned it since 1935, and this Court dismissed 16 Plaintiff's claim to that disputed property with 17 prejudice. 18 Now, let me go back to one other thing in 19 that order. It says that Ms. Mills testified about 20 access and access easement. Ms. Mills testified. She 21 also testified that should the Court find her to be the 22 owner of the parcel titled Lot 2 in the aforementioned 23 survey, that would then give her access to U.S. Highway 24 17A from her property. 25 So she discussed the issue of access in that

Page 26	Page 28
1 trial, and that issue of access was adjudicated, and 2 after that adjudication, this Court decided against 3 her. So now we've got the res judicata issue. 4 THE COURT: I take issue with you. In my 5 order of 2008, in my notes from that trial, she 6 testified that if I found her to be owner of that 7 tract, that would give her access is my understanding. 8 I found that she wasn't owner of the tract, so I 9 don't -- she may not -- she may or may not have access. 10 I don't know. That's what I -- I hadn't decided yet. 11 She testified that if I found her to be the owner of 12 the parcel, then that would give her access to her 13 property. 14 MR. WATTS: But I was suggesting that that 15 opened the door to the issue of access, which is before 16 us today in this particular court, and so it must have 17 been discussed and you must have ruled. 18 THE COURT: I didn't rule anything denying 19 her access in my order. 20 MR. WATTS: Okay. 21 THE COURT: I didn't do that. That issue 22 was never in front of me in that case, so... 23 MR. INGLESE: On your question of what's in 24 the record, we submitted Mr. Feeley's affidavit and all 25 of his attachments with the title search.	1 THE COURT: Well, there are too many facts 2 here for me to determine today. I'm going to deny your 3 motion for summary judgment and afford to you an 4 opportunity to present evidence to me which would 5 establish when your client got title, what she received 6 when she got her title, and those kind of things, and I 7 would require, you know, proper testimony to support 8 your position. I haven't -- I'm assuming in this title 9 work, that the deed in that title work that goes to 10 your client for her acreage is in that title work? 11 MR. INGLESE: I believe it's in there, but I 12 can supplement if it's not and would reserve an 13 opportunity -- would like to reserve an opportunity to 14 do that. I believe it's in there, but I don't want 15 to -- it is a lot of stuff, and, obviously, I don't 16 know every page that's in there. But we'd be happy to 17 supplement if it's not in there for some reason. But I 18 believe that the 1983 deed work is part of that. 19 MR. WATTS: That's Exhibit I, your Honor, 20 the chain of title to Ms. Mills' two acres. 21 Oh, and one other factual issue in this 22 matter, was it 11 or 12 acres -- 11 or 10 acres? All 23 the public records suggest 10 acres, and I don't know 24 where the 11 acres came up. 25 MR. INGLESE: It's mathematically
Page 27	Page 29
1 THE COURT: Your affidavit from Mr. Feeley 2 said he did this title work, and then -- I mean, you've 3 given me so much -- 4 MR. INGLESE: Yes. 5 THE COURT: -- work to look through that 6 title search; I mean, I don't have any -- I don't have 7 any testimony as to what that title search determined. 8 MR. INGLESE: Okay. We can -- 9 THE COURT: So, I mean, I'll tell you this 10 right now. I'm not going to give you a motion for 11 summary judgment if I've got to look through all of 12 that title work and determine for myself what that 13 says. 14 MR. INGLESE: He's available here. We can 15 ask him a couple questions. Essentially, the question, 16 I think, that would be helpful to the Court is: Was 17 there a residual one-acre tract that other -- that 18 outside of all this title work was never accounted for? 19 And Mr. Feeley can testify that that's what his title 20 work revealed. 21 MR. WATTS: Didn't your Honor rule that 22 there was no residual, that it belonged to Ms. Lurline 23 and it belonged to her since 1935? 24 MR. INGLESE: The issue of whether it was a 25 residual or already deeded is not clear.	1 impossible, you can't -- it's impossible to deny the 2 existence of something in excess of 10.3 acres. It's 3 mathematically impossible. It's there in the record. 4 It's a -- 5 MR. WATTS: Well, how does Mr. Inglese 6 calculate 11 acres? 7 MR. INGLESE: Well, we can go through it one 8 by one. There was -- 9 THE COURT: No, I'm not going to do that. 10 MR. INGLESE: Okay. 11 THE COURT: You know, summary judgment is: 12 Here, Judge, here's this. And I just -- to be honest 13 with you guys, any time somebody asks me for summary 14 judgment and it's based on this, there's got to be some 15 issue... 16 MR. INGLESE: I'll walk you through it. 17 THE COURT: No. I think I do have some 18 issues here that I need material fact before I can 19 determine how the law applies to this case. 20 MR. INGLESE: And is there an opportunity to 21 narrow some of those facts now, or do we just -- I 22 don't want to come in with a shotgun approach and try 23 and overuse the Court's time in a trial or... 24 THE COURT: The issues of fact would be 25 relating to the unity of title, all three of those

Page 30

1 avenues, frankly, when your client got the title, what
2 did she get when she got it, irregardless of what I did
3 in 2006 or 2008, what did she get, when did she get it,
4 what was given to her then.

5 MR. INGLESE: Okay. Can I talk to my
6 client?

7 THE COURT: Sure.

8 MR. INGLESE: Thank you, your Honor.

9 The only thing I didn't bring was a reply to
10 the defendants' return, and if I could submit it via
11 e-mail or First Class Mail, if I could keep the record
12 open to submit that, if there's no objection.

13 MR. WATTS: I object to that. I think we
14 should call it quits on this, on Plaintiff's motion.

15 THE COURT: Well, I've denied your motion.
16 I just need some -- I don't have enough facts here
17 concerning the title your client owns on the property,
18 not -- not -- not title to what was disputed in the
19 other case, but what did she get with her property or
20 what didn't she get, and then that would open the whole
21 issue up whether or not she had access, whether or not
22 the grantor denied himself access, and all that kind of
23 stuff. I don't need a reply.

24 MR. INGLESE: Okay. Thank you.

25 THE COURT: Save you a little work there.

Page 31

1 MR. INGLESE: Okay.

2 THE COURT: Okay?

3 MR. INGLESE: If I can hand out these cases
4 for your reference.

5 THE COURT: Yeah, that would be great. Any
6 case you-all would like for me to have in preparation,
7 further preparation, of this, I'll be glad to have
8 that.

9 MR. WATTS: Have you got Paine v. CSX?

10 THE COURT: Thank you. If we need -- as you
11 move forward with the case, if you -- I'll be glad to
12 have a status conference on down the road. If you
13 think we can narrow the issue and save time, we can do
14 that. I'll be glad to entertain that.

15 MR. INGLESE: Thank you, your Honor.

16 MR. WATTS: Thank you, your Honor.

17 THE COURT: Thank you.

18 (The proceedings concluded at 10:26 a.m.)
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true record of the proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 10th day of October, 2013, in the City of Charleston, County of Charleston, State of South Carolina.



Kendra E. Johnston

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) THE NINTH JUDICIAL CIRCUIT

CYNTHIA JACQUELINE JACKSON)
MILLS,)

Plaintiff,)

v.)

) Case No. 2012-CP-08-3013

JANET LYNNE HUDSON, HENRY)
RUSSELL JACKSON, and MILDRED)
JACKSON HUDSON,)

Defendants.)

PROCEEDINGS BEFORE THE HONORABLE DALE VAN SLAMBROOK

VOLUME I

DATE TAKEN: Monday, March 30, 2015

TIME: 10:32 a.m.

PLACE: Berkeley County Courthouse
300-B California Avenue
Moncks Corner, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

1 APPEARANCES
2 REPRESENTING THE PLAINTIFF:
3 CHRISTOPHER INGLESE, ESQUIRE
4 MARY LEE HUTSON, ESQUIRE
5 1011 Bay Street, Suite 305
6 Beaufort, South Carolina 29902
7 chris@ingleseandassociates.com
8 REPRESENTING THE DEFENDANTS:
9 PATRICK R. WATTS, ESQUIRE
10 Watts Law Firm, P.A.
11 133 East 1st North Street, Suite 6
12 Summerville, South Carolina 29483
13 pat.watts@wattsfirm.com
14
15
16
17
18
19
20
21
22
23
24
25

1 INDEX OF EXHIBITS (Continued)
2 PLAINTIFF'S EXHIBITS MARKED ADMITTED
3 No. 9 - Tax records 5 40
4 No. 10 - 2008 Order 5 40
5 No. 11 - 2007 GIS showing 5 40
6 easement and plat
7 No. 12 - Proposed plat for easement 5 100
8 No. 13 - Original Summary Judgment 5 40
9 transcript
10 No. 14 - 2006 Complaint 138 138

(All exhibits retained by the Court)

11 REPORTER'S CERTIFICATE.....181
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 INDEX
2 Testimony of Charles Feeley
3 Direct Examination by Mr. Inglese.....11
4 Cross-Examination by Mr. Watts.....40
5 Redirect Examination by Mr. Inglese.....73
6 Recross-Examination by Mr. Watts.....84
7 Testimony of Cynthia Jacqueline Jackson Mills
8 Direct Examination by Mr. Inglese.....90
9 Cross-Examination by Mr. Watts.....110
10 Redirect Examination by Mr. Inglese.....137
11 Testimony of Henry Russell Jackson
12 Direct Examination by Mr. Watts.....144
13 Cross-Examination by Mr. Inglese.....155
14 Redirect Examination by Mr. Watts.....164
15 Recross-Examination by Mr. Inglese.....166
16 Further Redirect Exam by Mr. Watts.....168
17 Testimony of Janet Lynne Hudson
18 Direct Examination by Mr. Watts.....169
19 Cross-Examination by Mr. Inglese.....177
20 INDEX OF EXHIBITS
21 PLAINTIFF'S EXHIBITS MARKED ADMITTED
22 No. 1 - Resume of Charles Feeley 5 40
23 No. 2 - Poster board 5 40
24 No. 3 - Plat and deed 5 40
25 No. 4 - 1931 Deed to Clark 5 40
No. 5 - 1934 Deed to J.W. Adkins 5 40
No. 6 - 1935 Deed to Fred Jackson 5 40
No. 7 - 1935 Deed to Rubin Jackson 5 40
and deeds out
No. 7A - Deed from T. Jackson to 5 40
R. Jackson
No. 7B - R. Jackson to Mullinax 5 40
No. 7C - Will, Devise & Descent, 5 40
and cross deeds
No. 7D - 2011 plat 5 40
No. 8 - 1969 Deed, Last Will and 5 40
Testament of John
Jackson, Deed

1 (The proceedings commenced at 10:32 a.m.)
2 (Plaintiff's Exhibits 1 through 7D and 8
3 through 13 marked for identification.)

4 THE COURT: Why don't we put everybody's
5 name on the record as well as the case number.

6 This is Cynthia Jacqueline Jackson Mills vs.
7 Janet Lynne Hudson, Henry Russell Jackson and Mildred
8 Jackson Hudson, case number 2012-CP-08-3013. And if I
9 could have the attorneys present identify themselves
10 and their clients and anybody else that we have in the
11 courtroom, please.

12 MR. INGLESE: Thank you, your Honor.
13 Christopher Inglese on behalf of the plaintiff, and I'm
14 with Mary Lee Hutson from my office, who's also an
15 attorney on behalf of the plaintiff.

16 MR. WATTS: And, your Honor, I'm Patrick R.
17 Watts. I'm the attorney for all of the defendants.

18 THE COURT: Okay. All right. And we had a
19 short pretrial earlier, and I understand everyone is
20 ready to proceed, and you-all have marked up some
21 documents to try and ease things along; is that right?

22 MR. INGLESE: That's correct, your Honor.

23 THE COURT: All right.

24 MR. INGLESE: And the transcript that we
25 provided from the summary judgment motion we've marked

Page 6 1 as Exhibit 13. I think we have a sticker prepared. I 2 can hand up your copy. 3 THE COURT: Do we have a list of exhibits 4 that you-all have agreed to? 5 MR. INGLESE: We do, your Honor. 6 MS. HUTSON: I have this, but not with 7A, 7 B, C and D written in, but this will be a good starting 8 point. 9 MR. INGLESE: Your Honor, we had a 10 preprepared list, but we need to make some edits to it 11 based on what Mr. Watts and I went through. And in the 12 meantime, I'll hand up the Poole vs. Edwards case, 13 which is -- We didn't have this case at summary 14 judgment. We did discover it shortly thereafter. And 15 I think it's right on point to the issues in this case. 16 And if I may approach. 17 THE COURT: All right. I'll take that, and 18 supply Mr. Watts a copy as well. 19 MR. INGLESE: I did, your Honor. 20 THE COURT: All right. Thank you. 21 MR. INGLESE: There is numerous other cases 22 in the record that have some applicability, but this 23 one adds to where those were deficient. 24 THE COURT: All right. Are we prepared to 25 go forward then?	Page 8 1 once a part of Mr. Jackson's 10-acre estate dating back 2 to about 1923, and we're going to present to you a 3 series of severances that go to the second element of 4 easement by necessity. 5 And with regard to the third element, 6 necessity, the standard in South Carolina is that 7 reasonable necessity as opposed to an absolute 8 necessity. So we don't have to demonstrate an absolute 9 necessity; we only have to demonstrate a reasonable 10 necessity. And you can see from the physical 11 conditions of the landlocked parcel that, indeed, this 12 case goes beyond just a reasonable necessity and does 13 arise to the absolute necessity, even though that's at 14 a greater standard, and we don't have to get that far 15 in order to be granted an easement by necessity. 16 You're going to hear from the other side 17 arguments regarding res judicata that reference a 2008 18 order of this Court granting the defendants entire 19 ownership, fee simple ownership, of a disputed parcel 20 of land. 21 And, essentially, this case boils down to an 22 estate that originated as 10.3 acres in 1923, and over 23 the course of time and subdividing and conveying the 24 property out, it is discovered that that property 25 exceeded 10.3 acres and that there was at least an acre
Page 7 1 MR. INGLESE: Yes, your Honor. 2 THE COURT: All right. And did you-all want 3 to present a summary in the way of an opening statement 4 regarding the arguments for clarification? 5 MR. INGLESE: I would like to, your Honor. 6 THE COURT: I'll hear from the plaintiff. 7 MR. INGLESE: This should be helpful with 8 the exhibits. 9 Your Honor, may it please the Court, on 10 behalf of the plaintiff, this case comes down to the 11 necessity of access to a landlocked parcel. And we are 12 going to present a series of deeds as well as GIS 13 information from the county planning department that 14 demonstrates the landlocked nature of the parcel 15 needing an easement. 16 And this case originated from our complaint, 17 and we have withdrawn our fraud and misrepresentation 18 claims, and we're focused solely on the easement by 19 necessity. 20 The elements of easement by necessity are 21 unity of title, severance, and necessity. And by way 22 of request to admit, the response from the defendants 23 was that unity of title is not in issue. They have 24 admitted that these parcels, the proposed servient 25 tract and the dominant tract of the plaintiff, were	Page 9 1 of residual that was the disputed parcel in 2008, or 2 the case originated in 2006, but that residual property 3 is essentially what has grown to the dispute between 4 the parties in this case. And once the 2008 order came 5 down from this Court, ownership became clear, but prior 6 to that, the residual property's ownership and 7 conveyances were, at best, cloudy. And, regardless, 8 the other side is going to argue that the conveyance 9 was in 1935. Our position is the conveyance was as a 10 result of the 2008 court order. 11 It doesn't really matter because the 12 severance in 1935 was the most recent in time with 13 regard -- in relation to the other parcels that were 14 part of the 10.3 acres. 15 So it really doesn't matter. I think our 16 position is the right one, that the 2008 Court order 17 created the severance, but if you take the other 18 position of the defendants, it results in the same 19 award to the plaintiff for an easement by necessity. 20 THE COURT: Mr. Watts. 21 MR. WATTS: Your Honor, our position is the 22 order of 2008 is not a conveyance, that the severance 23 occurred in 1935, and, through the statute of repose, 24 statute of limitation and laches, it's too late to do 25 anything about it now.

1 Agreed that Ms. Mills's property is
2 landlocked, but it's the grantor's fault, her
3 predecessor grandfather. And they are going to have to
4 show an absolute necessity if they're entitled to any
5 kind of easement.

6 THE COURT: All right. You can call your
7 first witness.

8 MR. INGLESE: Your Honor, Plaintiff calls
9 Mr. Charles Feeley.

10 THE COURT: Good morning, Mr. Feeley.

11 THE WITNESS: Your Honor.

12 THE COURT: If you would, raise your right
13 hand.

14 (Witness sworn.)

15 THE COURT: Thank you.

16 MR. INGLESE: Your Honor, the plaintiff
17 would like to qualify the witness as an expert. And I
18 don't know that there's an objection to that from
19 Mr. Watts, or if the Court would like to lay a
20 foundation to that, I'd be happy to.

21 THE COURT: Any objection?

22 MR. WATTS: I would like to go ahead and
23 have a foundation laid on the record, but I don't see
24 any objection otherwise.

25 THE COURT: All right.

1 been premarked as Plaintiff's Exhibit 1, your Honor.

2 BY MR. INGLESE:

3 **Q. Mr. Feeley, you were hired by my client to**
4 **do some title work?**

5 A. That's correct.

6 **Q. And can you just describe your process in**
7 **acquiring the title and history information for this**
8 **case?**

9 A. Sure. First I looked the property up in the
10 county mapping system, so I identified it on the county
11 tax maps. I was provided the TMS number, I believe, to
12 get started from you, from your client through you.
13 And the TMS number for the property in question is
14 180-00-02-016. That's in the Berkeley County Tax Map
15 System.

16 **Q. And you're looking at an image. What is**
17 **this image and where did it come from?**

18 A. Okay. This is -- this is actually a
19 printout -- You're referring to what's been premarked
20 Plaintiff's Exhibit 2?

21 **Q. Yes.**

22 A. That's a printout from the GIS department
23 that I actually obtained. It's basically a printout of
24 an aerial photograph of the tax map lines as they stand
25 right now for the property that I just referenced as

1 CHARLES FEELEY
2 being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. INGLESE:

5 **Q. Mr. Feeley, what is this I'm handing you**
6 **here?**

7 A. This is the most recent version of my
8 resume, essentially.

9 **Q. And where did this resume come from?**

10 A. I created that on my computer.

11 **Q. And can you summarize briefly for the Court**
12 **your credentials as a title examiner?**

13 A. Sure. I've been practicing law since 2002
14 or actually since 2003. My practice has always been in
15 the area of real estate and, in particular, title
16 issues. The primary area of my practice is in
17 conducting title searches and doing quiet title
18 actions. I have searched approximately 6,000 titles
19 over the course of my career. And that's a summary.

20 MR. INGLESE: Your Honor, at this time, we
21 would request the Court qualify the witness as an
22 expert in title examination.

23 MR. WATTS: No objection, your Honor.

24 THE COURT: Without objection, so qualified.

25 MR. INGLESE: And the witness's resume has

1 well as the surrounding properties.

2 **Q. You described the process of title**
3 **examinations. And how far back did your examination on**
4 **this particular case go?**

5 A. Right. So, I'll just back up a minute
6 because I started to describe the process of searching
7 the titles. But first thing I do is to identify the
8 property on the tax maps. I'll attempt to get a deed
9 reference from the auditor, which I did in this case
10 here, and then I'll begin to trace that property back
11 using what's called the derivation clause on the deed
12 as well as the deed indexes, the grantor and grantee
13 indexes, that are located in the County Register of
14 Deeds office. And then the indexes are organized by
15 name, so, basically, once you have a piece of
16 property's proposed owner's name, you can run that
17 through the index forward and backwards, and you'll
18 find any deeds into that person or deeds out from that
19 person. And so that's what I did with regard to the
20 two-acre property that we identified as TMS number
21 ending in 016.

22 And just to maybe make things move along,
23 all of the properties that are surrounding will have
24 the TMS number. The first part of the TMS number will
25 be the same. It's just the last three digits of TMS

Page 14

1 number that will be different. So when I'm
 2 referring -- if you're going to ask me questions about
 3 some of the surrounding properties or any of the other
 4 properties, I would probably just refer to the last
 5 three digits of the tax map number for expediency
 6 because the first part will be the same for all of
 7 these properties.

8 So I searched the property that I
 9 referenced. I then -- it became apparent that it was
 10 landlocked, and I was asked to search the surrounding
 11 properties as well, and I searched the title for all of
 12 the surrounding properties as well.

13 **Q. And how far back, how many years back, did**
 14 **you go?**

15 A. In this particular case, I went back to -- I
 16 actually have a copy of my full search here. I don't
 17 remember exactly the date, but...

18 MR. INGLESE: Your Honor, if the witness may
 19 refresh his memory from his notes?

20 THE COURT: Any objection?

21 MR. WATTS: No objection, your Honor.

22 THE COURT: Without objection.

23 THE WITNESS: Thank you.

24 A. Okay. In this case, I searched it back to
 25 1931, which was a 10.3-acre deed into an individual

Page 15

1 named -- No. I'm sorry. Actually, that's not correct.
 2 I was looking at a different deed here. I apologize,
 3 your Honor.

4 BY MR. INGLESE:

5 **Q. Mr. Feeley, I'm going to present you with**
 6 **premarked Exhibit 3, and that might help refresh your**
 7 **memory.**

8 A. Thank you. Yes. In this case, I searched
 9 it back to '23, 1923, January 20th, 1923. The reason I
 10 stopped at that point, that's where I found a deed into
 11 an individual named Thomas Jackson for 10.3 acres of
 12 land. There's also a plat for that 10.3 acres of land,
 13 and it's recorded in book B-12, and it shows the
 14 property identified as lot number 11, 10.3 acres on the
 15 plat. That's the same property described in the deed
 16 that I just referenced.

17 **Q. And for the record, could you take a colored**
 18 **marker and highlight the 10.3 acres on that plat?**

19 A. Certainly.

20 **Q. For the record, the witness is highlighting**
 21 **in orange the 10.3-acre tract relevant to 016 on the**
 22 **plat in Exhibit 3.**

23 A. Okay.

24 **Q. That's Exhibit 2. Could you also do it on**
 25 **Exhibit 3 for the Court's record, the plat portion of**

Page 16

1 **Exhibit 3?**

2 A. Okay. I've done that.

3 **Q. And is the property 016 a part of that**
 4 **10.3 acres?**

5 A. Yes, it is.

6 THE COURT: Any objection to the plaintiff's
 7 exhibits thus far?

8 MR. WATTS: No, your Honor, no objections.

9 THE COURT: Go right ahead, Mr. Inglese.

10 MR. INGLESE: Thank you, your Honor.

11 BY MR. INGLESE:

12 **Q. You testified that Mr. Jackson -- Which**
 13 **Mr. Jackson was the grantee in the 1923 deed?**

14 A. Thomas Jackson.

15 **Q. I'm going to present you with premarked**
 16 **Exhibit 4, and if you will summarize the next**
 17 **conveyance within that 10.3 acres that this exhibit**
 18 **represents.**

19 A. Right. After I got back to the 10.3-acre
 20 tract, I then began checking deeds out from Thomas
 21 Jackson, and I discovered in 1931 a deed from Thomas
 22 Jackson to Edward Clark for a one-acre tract of land.

23 **Q. Are you able to identify on the Exhibit 2**
 24 **what parcel that is?**

25 A. Yes, I can do that. I'll take a green

Page 17

1 marker and mark the area that was deeded off from the
 2 10.3 acres by this deed. Okay.

3 **Q. And I think you already said, but how much**
 4 **acreage was conveyed in that deed?**

5 A. One acre.

6 **Q. Okay. Mr. Feeley, there's a premarked**
 7 **Exhibit 5, and Exhibit 5 -- Exhibit 5 is another**
 8 **conveyance. Can you summarize this conveyance?**

9 A. Sure. This is another deed out from Tom
 10 Jackson. This is a deed from Tom Jackson to J.W.
 11 Adkins. That deed was dated November of 1934, and it
 12 transfers one and three-fourths acres.

13 One thing I'll note about both this and the
 14 last deed, neither of these refer to a plat.

15 **Q. And how is it that you are able to surmise**
 16 **the area deeded or conveyed?**

17 A. The legal description will help to identify
 18 the property. It will basically say -- for example, on
 19 deeds where you're talking about the 1.3 acres to
 20 Adkins, it has a butting and bounding legal; it says
 21 north and east on lands of Tom Jackson, south on lands
 22 of C.A. Jones, west on Summerville Highway. And so,
 23 basically, just orienting based on those notes in the
 24 legal description is the only information available to
 25 try and locate the property.

Q. So can you identify on Exhibit 2 where this conveyance is?

A. Yes. All right. I'll take a purple marker and outline it.

Q. And how is it that you know it's one and three-quarters of an acre?

A. Well, that's what the deed says was conveyed, one and three-quarters of an acre.

Q. And the GIS map on Exhibit 2, does it have an acreage amount associated with that property?

A. Yes, it does.

Q. And is it consistent with the deed?

A. Not exactly. It's 1.65 in the county tax maps at this time.

Q. So what would one and three-quarters be in the decimal?

A. 1.75.

Q. So it's more more or less the same?

A. It's approximately the same.

Q. I'm going to present you with premarked Exhibit 6, which is the next conveyance in time, and, if you will, summarize this conveyance for the Court.

A. Okay. This is another deed out from Thomas Jackson. This also comes from the original 10.3-acre tract. It's a deed from Thomas Jackson to Fred

butting and bounding legal description.

Q. And what was the date of this?

A. The date on that deed is September 21, 1935.

Q. Does that happen to be the same day as the previous conveyance from Exhibit 6?

A. Let me review the document. Yes.

Q. And can you identify the area that this conveyance represents, 7A?

A. Well, and again, it's three acres. It doesn't say three acres more or less. It says three acres. The area would be south of Fred's property, which is the piece that we were just talking about in Exhibit 6, and it would be three acres in this area here (indicating).

Q. Thank you. The remaining portion from Exhibit -- after Exhibit 6, you presented a three-acre conveyance, and you identified the remaining parcels. Can you tell the Court the total acreage of the remaining parcels, not including Exhibit 7A, but between 6, the conveyance in Exhibit 6, and the conveyance in 7A, how much acreage was remaining of Mr. Jackson's original 10.3 acres?

A. Okay. Looking at the current tax map records and the current information in the tax rolls as well as some subsequent plats, the area just south of

Jackson. The deed is dated September of 1935, and it transfers three acres. It also does not refer to a plat. It's a butting and bounding legal description.

Q. And based on the meets and bounds description, are you able to identify that parcel on Exhibit 2?

A. I can show you approximately where the three acres would be, would have been. I guess I'll take a blue marker and outline approximately the three acres.

Q. Can you identify the remaining parcels of the 10.3 original tract?

A. Yes. On the current tax map system, those parcels would be identified with the following TMS numbers: 017, 022, 016 and 113.

Q. The next exhibit is premarked 7A, 7B, 7C and 7D, and I want you to take this one at a time, but let's start with 7A.

A. Okay.

Q. And describe for the Court the conveyance of Exhibit 7A.

A. Okay. This is another deed from 1935. This is a deed from Thomas Jackson to Rubi Jackson, which I understand is also Rubin Jackson from other documents that we'll come to in the records, and it conveys three acres. It does not refer to a plat. It also has a

the property conveyed in Exhibit 6 is identified as TMS number 017, and that's approximately 1.5 acres. Also, just south and to the -- at the southeastern corner of Fred's property is a one-acre tract. Then -- and that's identified as TMS number 022 in the current map system.

Just below TMS 017 is another 1.5-acre tract, more or less, and that's TMS number 113. And then there's the original tract that would also be part of the residual, and it's 016, to the south of 113, and that's two acres, more or less.

Q. So taking out Plaintiff's property 016, taking that two acres out, what's the remaining acreage of 017, 113 and 022?

A. Approximately four acres.

Q. And, again, in Exhibit 7A, how much acreage was conveyed to the grantee?

A. Three acres.

Q. And that three acres is somewhere in this combined four-acre parcel?

A. That's correct.

Q. If you will refer to Exhibit 7B, and summarize the conveyance out from Mr. Rubin Jackson in this deed.

A. Okay. So, this is a deed out from Rubin

Jackson to Mr. Mullinax, and it conveys one acre. Again, it's -- it does not convey by plat. It is a butting and bounding legal description. That deed is dated April 9th of -- I'm sorry -- April 9th of '41, 1941.

Q. And based on your title examination, are you able to, to the best of your ability, identify that one-acre tract?

A. Well, and again, there are no plats for any of these conveyances except the 10.3-acre original tract, but that acre is approximately in the area of TMS number 022 on the country map system.

Q. Can you highlight in red or a color we haven't used -- This is the Mullinax property?

A. This would be a deed out from Rubin Jackson to Mullinax. I'll highlight it in brown.

Q. On the current GIS information, what's the acreage on the area you just highlighted?

A. One acre, more or less.

Q. And is that consistent with the deed you just read?

A. Yes.

Q. If you'll refer to premarked Exhibit 7C.

A. Okay.

Q. And tell the Court what we're looking at

here.

A. Okay. This is several documents. The first is the last will and testament for Rubin Jackson. It's filed in the probate court for Berkeley County. After that is what's called a devise and descent form also from Mr. Jackson's, Rubin Jackson's, estate file in Berkeley County, and the devise and descent basically lists property that transferred under the will through the estate process.

Q. And in Mr. Rubin Jackson's will and testament, what does it devise in regards to the real estate?

A. Item three of the will says: (Reading) My home place comprised of two acres with the dwelling thereon, situated on the east side of Highway 17A south of Moncks Corner in Berkeley County, South Carolina, I will to my wife, Lurline Jackson, for life, and then to Mildred J. Hudson and Henry Russell Jackson.

Q. And what are Henry and Mildred as far as their ownership interest?

A. It's my understanding that Miss Lurline Jackson has since deceased, so her life estate would be expired, and so the two acres would be owned by Mildred J. Hudson and Henry Russell Hudson (sic) at that point.

Q. So they're the remainder then?

A. They have remainder interest, yes.

There are also -- You asked me to identify what is in Exhibit 7C. In addition to those two estate documents, there's also two deeds and -- or two deeds.

The first deed is a deed from Mildred Hudson to Henry Russell Jackson for a 1.56-acre tract identified as Tract A on plat O, recorded in plat cabinet O, page 244Q.

The second deed is a deed from Mildred Hudson to Janet Lynne Hudson for a 1.55-acre tract identified as Tract B on that same plat, the plat filed in cabinet O, page 244Q.

And that's everything that has been marked as 7C.

Q. Can you identify the land conveyed in the will, the two acres conveyed in the will?

A. The two acres conveyed in the will would have been, essentially, residual property from the three acres that Rubin Jackson obtain from his father, Thomas. And the area for that property would have been south of Fred's, exclusive of the piece that had been previously conveyed out by Rubin during his lifetime to Mullinax, so it would be in this area here that I'm going to point to on the plat.

Q. So of the four acres we referred to earlier

minus the acre out to Mullinax leaves three acres, but the will devised two acres.

A. That's correct.

Q. And what about these deeds, are they consistent with that demonstration of the acreage being conveyed out?

A. Well, as I say, the deeds are each for approximately 1.55 or 1.56 acres, so that would total three acres of land. If we're looking at the deed into Rubin, he only acquired three acres total. He deeded one acre away to Mullinax, so that would leave Rubin with two acres of land to devise. And, in fact, that's what his will purports to do. But the total area that's conveyed in the two deeds that we were just talking about, the deed to Henry Russell Jackson and the deed to Janet Lynne Jackson, is just over three acres.

Q. And based on your testimony identifying the subtraction of the one acre to Mullinax, those deeds conveyed more than what it appears was remaining in Rubin Jackson's estate?

A. That is correct. I would note that those deeds are recorded in 2011. I don't think I stated the date for both of those deeds. The deed -- the deed to Henry Russell Jackson for 1.56 acres, Tract A, was

dated May 20th, 2011, and the deed to Janet Lynne Hudson for Tract B, 1.55 acres, was dated May 19th, 2011.

Q. So in your title examination, is there anything relevant between the last will and testament of Rubin Jackson and the 2011 deed that would give some clarity to title of this residual tract that we've identified as extra acreage?

A. Well, there is a 2006 quiet title action, essentially. The order was rendered in 2008. That would be in between those two deeds. I think that the two deeds were done after the 2008 order was filed, basically, to try and be consistent with the 2008 order.

Q. And if you'll look at 7D, Plaintiff's premarked Exhibit 7D.

A. Okay.

Q. Do you recognize this plat?

A. Yes. This is the plat that those last two deeds refer to with the Tract A, 1.56 acres, and Tract B, 1.55 acres. The plat is dated April 27, 2011, and it's -- the plat that I mentioned is recorded at cabinet O, page 244Q.

Q. And this plat corresponds to the two deeds from 2011?

In fact, it's just meets and bounds descriptions. They don't even cite dimensions to identify, you know, say -- for example, sometimes a legal description might say 100 acres on Highway 17A. It doesn't say that. So I would have -- I would have had a question about how the residual property appears to be three acres when, in fact, all that was devised was two acres.

And I guess, just to add to that, if the, you know, the person who had hired me to search Rubin's property had asked me, "Okay, well, what do we have here then? We want to convey this property." For example, I would have probably recommended having an accurate survey made of the entire property. I would have probably recommended only attempting to convey the three acres exactly as it was described on Rubin's original deed less and excepting the one acre that was conveyed to Mullinax, wherever that might have exactly been placed, and then a quitclaim deed for the rest of the property because -- because of the uncertainty, frankly, of exactly where the three acres versus the original three acres would have been.

Q. In your chain of title, did you come across the 2008 court order?

A. Yes.

Q. And did you consider that court order as the

A. Yes. The two deeds from 2011 reference and incorporate this plat in as part of the legal description.

Q. And going back to before the 2006 quiet title action was filed, what evidence would there have been with regard to ownership of the residual lands of the original 10.3 acres of Mr. Thomas Jackson?

A. Okay. So, before the 2006 case was ever filed, what would you have found if you had searched the title? Is that what you're asking?

Q. As a title examiner, what would you have seen or noted or what would your process have been, absent clarity of title, with regard to residual tracts?

A. If I was searching the property, say if I was searching the residual of Rubin's property, I would have seen at that point the deed for three acres, not three acres more or less, but three acres exactly is what the deed says. I would have seen the deed out of one acre to Mullinax. I would have seen Mr. Rubin Jackson's estate file, which purports to devise two acres. And then I would have also, as I say, overlaid all of that to the current tax maps and tried to identify and place those properties within the tax map. Unfortunately, none of these conveyances have plats.

point in time in which the adjacent portion of 016 became separated from 016 and became its own parcel, identifiable parcel?

A. That's correct, because you asked me to look before the 2006 case. After the 2008 order, my understanding of the effect of that order, and I -- I have reviewed the order and saw it as part of my title search, is that, essentially, the two areas that are -- that we just talked about, the 1.55-acre tract and the 1.56-acre tract, were determined to be part of Rubin's original property and to be the part of -- and, essentially, to be Rubin's property or Rubin's estate's property. So that's -- to me, as a title abstract, that order from 2008 is the first point when there's some clarity as to just where the boundaries for the property are, because before that, there would be a question. You've got a whole acre there that is seemingly unaccounted for.

Q. I'm going to present you with Plaintiff's Exhibit 8. And we've addressed all parcels except for 016, and I believe Exhibit 8 addresses that. Would you summarize the conveyances represented in Exhibit 8?

A. Certainly. There are actually three documents as part of Exhibit 8. The first is a deed. It's recorded in book A194-79. It's a 1969 deed from

1 the -- almost all of the heirs of Thomas Jackson to
2 John H. Jackson, and it conveys two acres, more or
3 less, of property. The two acres, again, it doesn't
4 refer to a plat. There's a butts and bounds
5 description here. I say almost all of the heirs of
6 Thomas Jackson because one -- there is a recital of his
7 heirs, and apparently there was -- there is no estate
8 for Thomas Jackson. One of his heirs, Bessie Jackson,
9 did not sign off on this deed according to the
10 information about his heirs provided in the recital at
11 the top of this deed.

12 The next document that's part of Exhibit 8
13 is the last will and testament for John Jackson, who
14 received the two-acre tract in that deed we were just
15 talking about, and, essentially, this is filed in the
16 Probate Court for Berkeley County, John Jackson's
17 estate is and his will. Essentially, this will
18 transfers title to the two-acre property to Cynthia J.
19 Jackson, who's the plaintiff in this case.

20 The third item is a deed recorded at A537,
21 page 172, from the heirs of Bessie Jackson Fiddie, who,
22 again, was the one heir that did not sign off on the
23 deed of Tom Jackson's heirs into John Jackson. This
24 deed is not to John Jackson. It comes after
25 Mr. Jackson had passed away, and so it's directly to

1 Cynthia J. Jackson. So, the effect of this deed is to
2 gather up that unaccounted for interest of the heirs of
3 Bessie Jackson Fiddie. So after this deed, Cynthia
4 Jackson would have all of the interests for the
5 two-acre tract, again, assuming that the recitals about
6 the family history are correct here in the deed.

7 **Q. Let me make sure I understand your**
8 **testimony, in that John Jackson inherited 5/6 interest,**
9 **5/6 of an interest in a two-acre tract?**

10 A. It was conveyed to him, yes.

11 **Q. It was conveyed to him. And there was a**
12 **remaining 1/6 interest that was vested in a Miss**
13 **Fiddie, F-i-d-d-i-e?**

14 A. It's spelled different ways. Here it is
15 spelled F-i-d-d-y on the original deed where all of the
16 other heirs signed off. When she actually signs -- or
17 she doesn't sign because she had passed away, but her
18 purported heirs are listed out, and it's spelled
19 F-i-d-d-i-e in the subsequent deed.

20 **Q. And who's the grantee?**

21 A. The grantees in the original deed to John
22 Jackson are Annette Jackson Tisdale, Rubin Jackson,
23 Grace Jackson Davis, and Fred Jackson. And just above
24 that, there are some recitals that essentially say that
25 those are, along with Bessie, the sole heirs of Thomas

1 Jackson, who, again, did not have an estate filed.

2 **Q. And just to be clear, what did those folks**
3 **do with their interest in the property?**

4 A. Well, they convey their interest in the two
5 acres, more or less, identified in this deed to John H.
6 Jackson.

7 **Q. And who did John Jackson convey his interest**
8 **to?**

9 A. His interest was devised through his estate,
10 so he essentially had title up until the point when he
11 passed, and through his estate, it was devised to --
12 well, see if we can find the paragraph in the will. In
13 the will, it says Jackie Jackson.

14 **Q. Is it your understanding that that's my**
15 **client, the plaintiff in this case?**

16 A. Yes, it's my understanding that Jackie
17 Jackson refers to the plaintiff in this case.

18 **Q. But she only inherited 5/6 interest?**

19 A. Well, that's correct, she only inherited 5/6
20 interest because that's all that John Jackson, her
21 father, had received through the prior deed.

22 **Q. And is the deed dealing with the remaining**
23 **1/6 interest -- which deed is that? Is that the A537,**
24 **page 172 deed?**

25 A. That's correct.

1 **Q. And that would have completed the conveyance**
2 **to the plaintiff in this case?**

3 A. Right. This deed is from the purported
4 heirs of Bessie Fiddie, and it purports that all of her
5 heirs are signing off to Cynthia J. Jackson, so that
6 the effect of this deed would be that, with 5/6 being
7 decided to John Jackson and then Miss Jackie Jackson
8 inheriting that 5/6 interest, she then was later able
9 to obtain a deed from the heirs of Bessie Jackson
10 Fiddie to get the outstanding 1/6 interest, so at that
11 point she would have had full ownership of the two-acre
12 property.

13 **Q. Thank you. And can you identify on Exhibit**
14 **2 the two-acre tract conveyed through this series of**
15 **probate will and deeds?**

16 A. Sure. I'm going to put a red X on the
17 property, and then I'll outline it as well.

18 **Q. And that's TMS number ending 016; correct?**

19 A. Correct.

20 **Q. I'm going to hand you Plaintiff's Exhibit 9.**
21 **And I've also placed a calculator on the witness stand**
22 **for your assistance. And what is this document and**
23 **where does it come from?**

24 A. Okay. This is a series of printoffs from
25 the county website. I actually made these printoffs

myself. And it's just the first page of the printoff, but this is what the auditor maintains as the Berkeley County property record card. I'll often use these to begin a title search, actually, because it will -- it will identify the property, it will show the approximate acreage, it will give you a deed reference for what the county believes the current deed for the property is or, if it was inherited, the estate reference, and it has other notes on there that are valuable to try and orient the property and just determine -- you know, to get started with the title search.

And what this is is a series of printouts. It is inclusive through TMS numbers 015, 016, 017, 018, 020, 021, 022, 023, 024, 099, and 113. Essentially, those are the properties that made up the 10.3-acre tract.

Q. And on those tax records, is there an indication of acreage on each record?

A. Yes. This would be based on, you know, the county mapping department's calculations.

Q. And did you calculate the sum of all of the acreage within the area you've identified as Mr. Jackson's original estate?

A. I did.

Q. And what was the total acreage you calculated?

A. It is almost exactly 12 acres, actually.

Q. So approximately 1.7 acres more than what was estimated in the 1923 plat?

A. That's correct.

Q. Mr. Feeley, I'm going to present you with Plaintiff's premarked Exhibit 10. I think you're familiar with this document. What is it?

A. This is the order from the 2006 case. It was rendered in 2008, actually; March 12, 2008 is the date of the order from Judge Watson.

Q. And I believe you already testified, but did you come across this in your title examination work?

A. Yes.

Q. And what did it tell you?

A. This order essentially -- and I wasn't part of this case, but, essentially, it appears that Miss Cynthia Mills, the plaintiff in this case, brought an action against the owners of TMS number 113 claiming that she was -- that Miss Mills was, in fact, the owner of 113, that that was essentially her access lane to her property, the two-acre property known as 016.

The order -- the effect of the order is Miss Mills lost that case, and the effect of the order

is that -- the order says, No, actually, even though it was only three acres deeded to Rubin, the property that was supposed to be conveyed to Rubin was more like four acres. It was essentially the entire area from -- from Fred's line to the north all the way down to Miss Mills' property and also Adkins' and Clark's property to the south. So, essentially, the order resolved the question of title for TMS number 113, TMS number 017 into the defendants in that case.

Q. And as a title examiner, when you come across a court order resolving a title issue, what's your process for noting that and providing that information to your client?

A. Well, it will just be included with all of the other various copies that I make. You know, as part of the title search, I'll make copies of anything that I find, so any of the deeds out, I'll make a copy of that plat; I'll make a copy of estate documents. And this order, you know, effectively is, I would say, in the nature of a title document because it resolves a title issue for the property. So I had a copy of this as part of the title search.

Q. Earlier you testified that prior to 2006, if you had done this title examination, there would have been a question as to title of the residual property.

A. Well, the -- Yes. The question is -- Rubin was conveyed three acres, but there's really four acres of property here. Where exactly is that three acres? That would have been the question in my mind.

Q. But when you see a court order, that question doesn't exist anymore?

A. I looked at the file in the clerk's office briefly. I copied the order. I confirmed that the order was not appealed. And so, you know, the order, in my mind, the order resolves that question.

Q. Were you able to form an opinion as to when this property was separated from 016?

A. Well, in my opinion, the first time that it's conclusive that the 016 piece of property is -- no longer has access, for example, to 17A through the residual property of Thomas Jackson is with this order because the order -- the order essentially says the deed to Rubin says three acres, but really it conveyed four acres. Okay. That resolves that issue. And so at that point, the effect of this order is to mean that all of the property comprising TMS numbers 017 and 113 were, in fact, part of the lands of Rubin.

Q. Well, is it also an effect of the order that 016 is now separated from the adjacent north parcel currently known as 113?

A. Yes. I would say if -- I think this is what you're asking me. I would say the first time that I could conclusively say that the 016 does not have any access or has basically been landlocked is with this order that was rendered in 2008.

Q. Thank you. I'm going to show you Plaintiff's premarked Exhibit 11. And there's two sheets there. If you'll describe what you're looking at for the Court.

A. Okay. The first is a GIS printout from Berkeley County's mapping system, but it's not a current map. It's actually the map as it appeared in 2007. You know, as different pieces are subdivided and their shape changes, the tax maps will change along with that. And so this is as it appeared on the tax map system in 2007.

The second is a plat. It's a plat recorded -- that was recorded in Berkeley County, and it's recorded at R260A. It basically matches the 2007 tax map. This is the plat that -- actually, there's some discussion of this plat in the order that we were just talking about, and, essentially, this plat has now been vacated by that order, and there's a note to that effect on the plat as well.

Q. And in 2007, the GIS information, what's the

shape of parcel 016?

A. Essentially, parcel 016 included most of the area comprising 113, if not all of the area comprising 113.

Q. Can you demonstrate with a black marker and dashes what portion of 113 was included in the 2007 GIS information system?

A. Well, what I'll say is the line between 113 and 017 was actually changed in 2011 with the recording of that plat, so the exact line between 017 and 113 as it sits on the maps now does not appear to me to be the line that would have been between the area comprising 113 now and 017.

Q. You're looking at what's referred to often as a flag-shaped lot; correct?

A. It's a flag-shaped lot.

Q. And can you approximate -- and it's duly noted that this isn't to survey, but could you approximate with a dashed black marker line where the flag-shaped lot is on Exhibit 2?

A. Okay.

Q. Dash. Dash.

A. Dash.

Q. Thank you. But as you testified, that's no longer the case because there's a 2011 plat and a court

order from 2008 that did away with this?

A. Yes, that's correct.

MR. INGLESE: Nothing further.

THE COURT: Cross-examination.

Quick question first. I was trying to keep track of all of the exhibits from the list, and I think I've got everything that you've provided to me, but I may not have, or maybe it's included in here, 12, the 2005 plat. Did you all mark and hand me that?

MR. INGLESE: I was going to introduce that with the next witness.

THE COURT: Okay. And at this point, any objection to 1 through 11, including 7A, B, C and D, and number 13?

MR. WATTS: No objection, your Honor.

THE COURT: All entered without objection. (Plaintiff's Exhibit Nos. 1 through 11, including 7A, B, C and D, and 13 admitted into evidence.)

THE COURT: The only one remaining on the list then is number 12.

MR. INGLESE: Thank you.

CROSS-EXAMINATION

BY MR. WATTS:

Q. Mr. Feeley, go back to Exhibit 3. This is

the old Brothers and Cheves plat of Lot 11.

A. Okay. I have it.

Q. On the eastern side, there's something called Summerville Road. Do you see that?

A. That's correct.

Q. Do we all agree that's Highway 17?

A. That's my understanding, yes.

Q. Okay. And on the -- Did I say eastern? I meant western side.

A. Yes, you're correct. That would be on the western side of the property.

Q. And then on the eastern side, there's a road called Oakley Road.

A. Correct.

Q. Do we all agree that that's now Branch Road?

A. I agree.

Q. And on the eastern side of what's marked or what's identified as Oakley Road on the plat, there are additional lots that are part of this H.L. Barker property; is that correct?

A. Yes.

Q. Now, you said that the Lot 11 was 10.3 acres, but I really can't read that. Have you got something bigger that shows these numbers better?

A. I do have a larger plat here. It may be a

Page 42

1 little bit easier to read on the one that I'm holding.
 2 My notes indicate it was 10.3 acres. Sometimes, even
 3 with a large plat, it's easier to read these old
 4 documents and plats off the readers, and then when you
 5 print them out, it's a little more difficult. You're
 6 welcome to look at this larger one that I have here.
 7 MR. WATTS: All right. May I approach the
 8 witness, your Honor?
 9 THE COURT: Yes.
 10 BY MR. WATTS:
 11 Q. Well, this larger copy, where did you get
 12 this?
 13 A. From the RMC office, Register of Deeds
 14 office.
 15 Q. There are numbers around the outside
 16 perimeter of Lot 11. What do you make those out to be?
 17 A. Dimensions, line dimensions, for the various
 18 border properties or for, basically, the boundary lines
 19 for the property, lot number 11. Are you asking what
 20 the numbers actually read?
 21 Q. I will in a minute. May I have that big
 22 plat back, big copy? I wanted to look at the title.
 23 The complete title of this plat is: H.L. Barker map of
 24 a tract of land containing 3.7 or -- I mean 317.0 acres
 25 surveyed for Land Investment Company by McCrady

Page 43

1 Brothers and Cheves. Looks like the date is November
 2 something 1918. Would you agree with that?
 3 A. Yes.
 4 Q. All right. I don't see any notes on the
 5 plat. Do you suppose these numbers that are around the
 6 outside of the outside -- the boundary lines of Lot 11,
 7 are they in feet or chains?
 8 A. Well, I'll be honest. Based on this plat, I
 9 could not tell you what the numbers were or whether
 10 they're in feet or chains.
 11 Q. Okay. What do you know to be the survey
 12 standards in 1918?
 13 A. I don't know much about the survey standards
 14 from 1918.
 15 Q. What do you know about measuring tools in
 16 1918 that surveyors used?
 17 MR. INGLESE: Objection, your Honor. This
 18 is a witness on title examination, not surveys.
 19 THE COURT: I think he's entitled to
 20 cross-examine on information that's relevant to the
 21 dimensions he's reviewed.
 22 BY MR. WATTS:
 23 Q. Okay.
 24 A. I -- I don't know is my answer.
 25 Q. Would you agree that the surveying tools in

Page 44

1 1918 to measure property lines are a lot less accurate
 2 than survey tools we have in 2015?
 3 A. Yes, I would agree with that.
 4 Q. Let's see. Exhibit 3 includes the deed into
 5 Thomas Jackson, and that -- that property description
 6 is a direct reference to the plat we're talking about.
 7 A. Correct.
 8 Q. So Exhibit 4 is the deed from Tom Jackson to
 9 Edward Clark.
 10 A. Correct.
 11 Q. And it describes the property to Clark as on
 12 the north by lands of Tom Jackson, on the east by
 13 public road from Oakley Road to Summerville, on the
 14 south by Charles A. Jones, on the west by lands of Tom
 15 Jackson.
 16 A. Correct.
 17 Q. And I'm going to come up here to this large
 18 chart. That would comport with what you were saying
 19 was this southeast corner.
 20 A. Yes, as -- you know, as best as we can
 21 approximate the way that these legal descriptions are
 22 written up, that would be the area that the one acre
 23 would come out of.
 24 Q. And what this -- Okay. Then Exhibit 5 is
 25 the deed from Tom Jones (sic) to J.W. Adkins?

Page 45

1 A. I agree.
 2 Q. And that property is described as butting
 3 and bounding north and east on lines of -- or lands of
 4 Tom Jackson, south on lands of C.A. Jones, west on the
 5 public road known as Summerville Road.
 6 A. That's correct.
 7 Q. So that would comport with what you outlined
 8 in red as the northwest -- I mean the southwest corner
 9 property?
 10 A. I think it was outlined in purple on that
 11 one, but yes.
 12 Q. Purple.
 13 A. Correct.
 14 Q. All right. And then we have Exhibit 6,
 15 which conveyed to Fred Jackson the northern sector of
 16 this Lot 11; correct?
 17 A. That's correct.
 18 Q. And then we've got Exhibit 7A, which is the
 19 deed from Tom Jackson to Rubin Jackson, and that's
 20 described as north by lands of Fred Jackson, and east
 21 by lands formerly of H.L. Barker. And that would
 22 indicate -- that would indicate a reference back to the
 23 old plat; correct?
 24 A. That is correct.
 25 Q. So that -- so you agree that the property to

Rubin went all the way over to Oakley Road or Branch Road?

A. Yes, I agree.

Q. Then it further describes the property as south by lands of Wesley Adkins. And that would comport with this -- this line here between 015 and 211 or -- I'm sorry. That's 113.

A. That's 113. I drew through it. Yes. Adkins had the southwestern corner piece.

Q. So according to this deed from Tom to Rubin, Tom gave Rubin property all the way down to that line.

A. Well, I don't exactly agree with that. I'll be happy to tell you why.

Q. Yes, please do.

A. It was three acres conveyed in that deed, not three acres more or less, but exactly three acres. If you'll notice, as we see from the old plat, Summerville Highway was certainly -- now 17A, was certainly in existence when the 10 acres or 10.3 acres original tract was formed, as was Oakley Road, which is now Branch Road.

If you'll notice, well, for one thing, this deed says it was south by Adkins, but it would have also been south by residual of the lands of Tom Jackson and also at that point south by the lands of Clark,

A. That's correct, on the other side of Branch Road.

Q. And the description is unmistakable when it says south by lands of Wesley Adkins.

A. That's true.

Q. So it's got to mean that line; correct?

A. Well, for the same reason that the description ignores Branch Road, they could have also ignored -- if -- If this was a right-of-way that was being preserved into the two-acre piece, then since they were already ignoring in the legal description, Branch Road and 17A, it's not implausible to me at all that they would ignore this right-of-way. And, basically, they described the property skipping roads. I think it's a poor practice personally, but I think that's certainly possibly what they did here. Actually, in my experience, looking at old deeds, I have seen this type of butts and bounds description before where they basically just ignore roads, and it was -- you know, I've come across this before.

Q. Well, the deed from -- Exhibit 6, the deed from Tom to Fred, it says east by lands formerly of H.L. Barker. And so that deed apparently is also ignoring Branch Road.

A. Yes, I agree.

which was the piece in the southeastern corner that was already conveyed out. So the south reference in here, in this legal description, in Rubin -- my opinion is that the deed to Rubin is a great deal of the confusion in this case, quite frankly. The south reference basically ignores two of the southern boundary property lines. The south -- The deed from Tom to Rubin also ignores in its recitation Branch Road and 17A. So, for example, it says to the west by lands of Mizzell, just ignoring 17A.

So the part that I'm not willing to agree with is the fact that this deed clearly shows that Rubin's property extended all the way to the Adkins boundary because we already see that the description, the way it was written up, is ignoring roads, and, you know, if they're going to ignore Branch Road in this description and ignore 17A, it's certainly a possibility to me, in my mind, that they could have ignored the right-of-way going over to the residual piece as well.

Q. Well, it's clear that the eastern boundary line for Rubin's property was H.L. Barker; and if you refer back to the McCrady Brothers and Cheves plat, Barker owned the property on the other side of Branch Road.

Q. And these deeds were done in 1935; right?

A. I agree.

Q. Exhibit 7B is the deed from Rubin Jackson to Holroyd Mullinax.

A. Okay. I have it.

Q. And that property is described as bounded on the north by lands of John Jackson. Now, this deed is dated April of 1941. And based on my title work, I understand that Fred Jackson conveyed land to John Jackson.

A. Yes, I found that deed as well.

Q. Okay. This is hard to read. All right. Bounded by, the property to Mullinax, north by lands of John Jackson, east by Barrows Road, south by lands of Eddie Clark. And that would comport with the deed from Tom Jackson to Eddie for this southeast corner.

A. Well, yes, again, subject to where I was saying before, but yes.

Q. And then west by Rubin Jackson. Here's Rubin Jackson conveying to Holroyd Mullinax what is identified with a TMS number 022.

A. Correct.

Q. And the western boundary is Rubin Jackson only.

A. I agree.

Q. There's no other lot owner, no other property owner besides Rubin on the west.

A. I agree that that's what the deed says. I suppose one question in my mind is exactly where the acre is situated. Also, I think it's possible that Rubin conveyed part of the property that was, in fact, conveyed to him by Thomas and part of the residual lands as well.

It's also possible that, just as we saw in the last deed, where they only referenced one of the property owners per directional side listed, that that's the case here as well. So, for example, in the deed -- the deed before into Rubin, it only listed Adkins to the south, when clearly there were three different property owners at that point to the south.

Q. Now, all of these deeds we've just talked about are general warranty deeds; correct?

A. Bear with me one moment. That is correct. Each deed has a standard warranty clause.

Q. And as you pointed out, all the deeds are described properly by adjacent landowners.

A. Correct.

Q. They're not described by meets and bounds. There are no distances on any of these boundary lines.

A. Correct.

acre. Exactly where, though, I think that's -- that's a little bit not clear based on the legal descriptions in most of these deeds.

Q. Well, going back to one of my previous questions. These deeds are executed in the 1930's.

A. Correct.

Q. What sort of tools were available for these folks to measure an acre?

A. Well, and again, I have never been a surveyor. I don't -- but I do look at plats, and I do see them through my title work. Exactly what tools, I honestly can't say. I suspect they did not have in the '30s, you know, laser systems that I understand they'll use today certainly.

Q. So you'll agree that in the 1930's, the tools available to surveyors were way less accurate than what we have today.

A. Yes, I'll agree with that.

Q. And you indicated earlier that contemporaneous with these 1930's deeds, there were no plats created of these lots.

A. Correct.

Q. Let's put it this way. There are no plats on record.

A. Well, yes, correct.

Q. There's no compass calls on any of the boundary lines.

A. Well, some of the properties are identified to the north by so and so, if that's...

Q. I mean a compass call, like southwest, I mean south 200 degrees or west.

A. No.

Q. Nothing like that.

A. No.

Q. Everything is just by adjacent landowners.

A. Correct.

Q. So when you look at that deed, say, from Tom Jackson to Edward Clark, you can't tell from that deed whether that's really one acre or one and a quarter acre or anything.

A. Well, I'll say -- I will say this. In my opinion, the deed says one acre, so he got one acre. Now, exactly where that one acre is -- It doesn't say one acre more or less. It says one acre. Exactly where it is is difficult to place, frankly. Basically, to search these titles, I have to start with the current tax map for each one and trace them all back and then bring them back up through the indexes, the name indexes. And so, yes, I would agree that it -- in my reading of this, the effect of this is to convey one

Q. Okay. And so we don't have a plat by which to measure the acreage or confirm a property line.

A. Yes. These are, essentially, based on what we have in the legal description of these, a best effort to place these properties.

Q. And, of course, you weren't born in 1935, so you don't know what the -- what standards were in place for writing up legal descriptions.

A. I definitely wasn't born in 1935 or alive at that time. I've seen a lot of different older deeds in my experience, and these deeds are -- I would say that the way these are written up, I've seen many deeds like this in many different chains of title as you look at older deeds.

Q. So you'd say that these kind of legal descriptions were pretty much customary back in this time frame?

A. I would say that they were customary, but there were better practices even in that time frame. For example, the original 10-acre property had a plat, and that helps us to orient it, and that was, you know, back in the twenties.

Q. You said that this plat was 10.3 acres, but by your calculations, counting up what the assessor comes up with, it's actually 12.

1 A. That's correct.

2 Q. Is that right? So even this plat is
3 inaccurate.

4 A. Well, I'll say this. Adding up all of the
5 properties that we've identified with the tax numbers
6 we've been talking about, based on the calculations
7 that the county has come up with and using their
8 numbers, it comes up to 12 acres.

9 Q. But in the 1930's, based on these legal
10 descriptions the way they're written, and based on the
11 fact that there were no plats created contemporaneous
12 with the deeds, that any kind of measurement of length
13 of line or -- it's impossible to really say that
14 Mr. Clark, for instance, got one acre and Mr. Adkins,
15 for instance, got one point -- or one and three-quarter
16 acres or that Mr. Fred Jackson got three acres.

17 A. Well, I'll just take a slight exception, and
18 I'll explain what I mean. I think the deed is all we
19 have to go by, and it -- the way that it describes the
20 property, you can't pinpoint where, but I think if it
21 says we're conveying one acre and it doesn't say "more
22 or less," for example, which most of the deeds we've
23 been talking about don't, he got one acre. Exactly
24 where that one acre is, I agree, is a little bit
25 questionable. We can place it because it does tell

1 you, you know, different bounding property owners.

2 Q. It sounds to me like you're placing today's
3 standards with the standards from 1930, and, in that
4 event, every property line in Berkeley County is going
5 to be off.

6 A. Well, there may be deviations in a lot of
7 property lines.

8 Q. And every -- every calculation of acreage is
9 going to be off.

10 A. I will say there are other kind of
11 principles of law, such as, for example, adverse
12 possession, that might be applied to clarify some lines
13 over time that are not exactly clear, but I have, in my
14 own practice, have regularly handled quiet title
15 actions where the issue was figuring out exactly where
16 the property was, and that was the sole issue and
17 reason for the action.

18 Q. Let's go back to Exhibit 7A and 7B. 7A is
19 the deed to Rubin, and we've talked about it being
20 bounded on the south by lands of Wesley Adkins.

21 A. Correct.

22 Q. And then the deed from Rubin to Holroyd says
23 that parcel is bounded on the south by Clark.

24 A. Correct.

25 Q. So we've got one line established between

1 Rubin and -- Rubin and Adkins on the southwest, and
2 we've got one line established between Rubin and Clark
3 on the southeast, so that would tend to indicate that
4 the property line of the property -- the southern
5 property line of the property given to Rubin was more
6 or less a straight line all the way across from Highway
7 17 to Branch Road.

8 A. It could indicate that, but I'm not -- I'm
9 not willing to say that I agree with that, and the
10 reason is just as I said before. First, he only got
11 three acres. That's four acres of area in general.

12 Second, the deed into Rubin Jackson
13 basically appears to be ignoring roads and entryways.
14 And so, for example, it doesn't at all talk about
15 Highway 17. It just jumps the street and talks about
16 the owners on the opposite side of the road. It
17 doesn't talk about what's now called Branch Road. It
18 just jumps Branch Road and talks about the owners on
19 that other side of the road. So it's not inconceivable
20 to me and it doesn't necessarily follow that they
21 wouldn't have followed that same practice for the
22 southern border and just jumped the right-of-way lane
23 and referenced the Adkins property.

24 Q. Well, you've examined lots of titles, and
25 you've seen that practice before, haven't you?

1 A. Yes, I have.

2 Q. Where they ignore a road and just talk about
3 a property owner --

4 A. Yes, I have.

5 Q. -- on the other side of the road?

6 A. Yes, I've seen that practice.

7 Q. So that's not that unusual in this
8 particular instance.

9 A. No. And that's why I'm not willing to say
10 that the line between -- that the northern boundary of
11 the Adkins property is the southern boundary of Rubin's
12 because I've seen that many times before, and they're
13 even doing that on two of the boundaries that we know
14 in this deed to Rubin. It's certainly conceivable to
15 me that they did it one more time on the southern
16 boundary of Rubin's property.

17 Q. All right. Well, we've got plain and
18 unmistakable language in a deed, in two deeds. Bounded
19 on the south by Adkins, bounded on the south by Clark.
20 So what do you have that refutes that, the plain and
21 unambiguous language of a written document that's 80
22 years old?

23 A. Well, my position is not to -- just to be
24 clear, my position is not that it doesn't go all the
25 way down. It's that it's not clear to me. And the

point in time that it does become clear, based on the title record and the public record, would be that 2008 order because that -- that resolves the issue in my mind. Up until then, we've got a three-acre tract of land that was conveyed over four acres of actual area.

Q. Let's look at Exhibit 8. This includes the deed from John Jackson by the heirs of Thomas Jackson.

A. I have it.

Q. Now, it describes that property as bounded on the north by lands of Rubin Jackson and the west by lands of Edward Clark, south by lands of C.A. Jones, now Burden, and west by lands of Adkins.

A. I agree.

Q. So that would -- that comports with the deed from Tom to Clark for the southeast corner, and it comports with the deed from Tom to Adkins on the southwest corner.

A. I agree.

Q. And it must also comport with the deed from Tom to Rubin for the north boundary.

A. Well, it does say -- this is the first deed we've looked at that says two acres more or less, but it is -- I agree that whatever property was conveyed to John Jackson likely did bound on the north to Rubin's property.

there may be an extra acre in what was given to Rubin.

A. Well, it's not inconceivable, and I will certainly concede to that. If you're talking about one acre out of three acres, that seems like a lot. One acre out of a thousand, you know, I wouldn't really bat an eye about. So it does depend upon the property you're talking about. And a lot of this is making judgement calls based on what you have available in the documents that you're looking at.

Q. The deed from Tom to Rubin, Exhibit 7A.

A. Okay.

Q. No reservation of an easement in there; right?

A. Agree.

Q. And in your research on the public record, you found no proof of any kind of road in existence in the early 1930's that would have connected Tom Jackson's residual to either Highway 17 or Branch Road?

A. There really are no plats, and I didn't see any separate, you know, written documents filed in the RMC records that would indicate that.

Q. And you -- and there's nothing in the public record reflecting any kind of agreement between Tom Jackson and, say, J.W. Adkins or Edward Clark about access to either of the highways, the public roads.

Q. Now, there isn't any -- in this description, there isn't any bounded on the west by a highway or by property across Highway 17. It's just bounded on the west by Adkins.

A. Agree.

Q. And same for the east. There's no other adjacent property owner other than Clark that binds the eastern boundary of this property described here.

A. I agree.

Q. It doesn't say Mullinax. It doesn't say Barker. It just says Clark.

A. I agree.

Q. So this would also tend to indicate that the boundary line between Tom and Rubin was straight across along the boundary line of Adkins and then connecting over to the boundary line of Clark.

A. I agree. And one thing that's different with this one is, essentially, it is the piece of property that would be bounded and squared off, there is more or less two acres. What bothers me about the Rubin deed is the fact that we're missing an entire acre there.

Q. But going back to survey standards of 1935 and the standards for describing real property, you wouldn't be surprised, you shouldn't be surprised that

A. No.

Q. And nothing in the public record between Tom Jackson and C.A. Jones or the Burden family as to access down to what appears to be called Burden Hill Road.

A. Not that I found, and my search would have -- should have uncovered anything if it was recorded.

Q. And nobody's given you any kind of collateral documentation indicating any of those kind of agreements?

A. No.

Q. So we just don't know if there was an agreement or not.

A. I don't.

Q. There could have been; there might not have been.

A. I agree.

Q. You said earlier that the John Jackson in here is Miss Mills's daddy; is that right?

A. That's my understanding.

Q. So, in summary, we've got Tom Jackson owning Lot 11 from that McCrady Brothers and Cheves plat, and we've got an out conveyance by him of the southeast corner to Eddie Clark, and then we've got an out

conveyance next by him to J.W. Adkins of the northwest corner, and then an out conveyance --

A. Well, if I can just stop you. The Adkins would have been the southwest corner, not northwest.

Q. I'm sorry. You'd think a property lawyer would get that straight at some point in time in his life.

All right. Conveyance to J.W. Adkins of the southwest corner, and then a conveyance of the top portion of Lot 11 to Fred Jackson, and finally a conveyance to Rubin Jackson of the middle portion.

A. Essentially, yes.

Q. And seems like -- and you understand -- well, and there's no reservation of any easement, access easement, in the deed from Tom to Rubin.

A. Correct.

Q. And you understand that to be the defendants' case, that that was the unity of title. Tom owned this portion marked with 016 and this portion marked/identified as 113 and conveyed all of that out, and that was the severance.

A. You said the defendants' case, I understand that to be the defendants' case. You mean for the 2008 case or the current case?

Q. Both.

of the property by adjacent landowners. And didn't you agree earlier that that was a typical standard back in those days?

A. Yes. My position is not that the Court got it wrong in the 2008 order, frankly; it's not that they got it right. It's that, essentially, it wasn't until that order that we had clear resolution, because in my mind, looking at the title, up until that order, there was a real question about where the three acres was, whether or not he got three or four, which was the actual area, you know, essentially comprising these different TMS numbers we've been talking about. I just honestly couldn't say. That's essentially what my position is, my opinion is.

Q. Okay. So the 2008 order confirmed that Rubin got the property all the way down to the line with Adkins and the line with Clark and what we see now as the line for Miss Jackson for number 016?

A. Yeah, the order definitely confirms that Rubin got all of that property.

Q. Okay. And that was based on -- How did the order word that? Finding based on testimony and the deeds and documents examined by the Court.

A. You're asking me if that's the language from the order? I'm sorry.

A. My understanding of the 2008 case is, essentially, that the Court determined that -- on two alternative theories, either that the deed did, in fact, include -- the deed to Rubin did, in fact, include the area now comprising 017 and 113, or, alternatively, that even if the deed did not include all of that area, it would have also included the piece that was deeded off to Mullinax as well, which is 022, but even if that was not the case, that Rubin or his folks essentially acquired title to the area comprising more or less 113 through adverse possession, you know, over -- use over a course of years.

Q. And you adamantly maintain that, even though survey standards, measuring tools in the early 1930's, and legal description requirements or standards in the 1930's, although they were -- if they were very inaccurate by today's standards, you insist that Rubin got only three acres.

A. Well, I know he only got three acres because that's exactly what the deed says he got. Now, where you're going to situate those three acres, you know, I'm not sure. If --

Q. I mean, I guess my point is that you insist he only got three acres because that's what the deed says, but the deed also talks about the boundary lines

Q. Yeah. That's Exhibit 10, page 3, down at the bottom.

A. Yeah, that's what the order says.

Q. And the deeds -- the deeds are the ones we just talked about, the one to Clark, the one to Adkins, and the one to Rubin.

A. The deeds that the Court referred to in that order?

Q. Yeah.

A. There's no transcript from that case. All I have is the order itself. The order doesn't actually refer to any deeds by book and page, but I would -- I would imagine that they were certainly looking at those deeds to make those conclusions.

Q. But you examined the title to this property, all of this property. You didn't see any other deed that the Court could have been referring to.

A. No.

Q. And that would tend to indicate that the unity of title was in 1935 between Tom and Rubin and the severance was the deed from Tom to Rubin.

A. Based on the order, the -- based on this order from the 2006 case, which says that all of that property was, in fact, conveyed to Rubin, then, yes. But I don't think if you searched before that order you

would have been able to make that determination. It took this order to really put a person into a position to say, Okay, now we have an order that clarifies what -- that three acres really means four acres, and so then we can -- then we can --

Q. Right. The order clarified --

A. Yes.

Q. -- that Tom gave Rubin this middle section all the way across from Highway 17 to Branch Road, and that the southern property line of Rubin's property is pretty well marked, just like -- pretty well marked just like it is right now by this GIS map.

A. Yeah. The order, again, had two theories. One was that it was granted. The other was, even if it wasn't, then through adverse possession over a course of years, basically, the Court awarded all of that property to Rubin's people through the 2008 order.

Q. So if you -- if you follow my argument, that -- that was -- Tom Jackson voluntarily landlocked himself.

A. If the severance occurred with the deed from Tom to Rubin, then, yes, I agree.

Q. Let's see. Tom Jackson got all this property in 1923, and he started conveying property in the early thirties, and he conveyed the property to

Q. And then Mr. John Jackson dies in 1974 and wills the property to his wife, Eunice. And so between 1969 and 1974, John had the opportunity to do something about this. That's just five years, but, nevertheless.

Is that correct?

A. Okay. I agree. I mean I agree that that's a five-year span of time.

Q. And then Miss Eunice and the others conveyed the property to Miss Mills in 1983, so that would have been -- that would have given Miss Eunice nine years to address the problem or the issues about access and that extra acre.

A. Okay.

Q. And so then the next formal action is Miss Mills's lawsuit in 2006.

A. I agree.

Q. And that's -- so that's 23 years after Miss Eunice -- I mean Miss Mills gets the property that she addresses the issue about the extra acreage or access.

A. I'm hesitant to fully -- I agree with your time calculations. I don't know, you know, what these folks might have done. There's nothing on the public record, I can tell you that, based on my search from the public record. I don't know what kind of conversation someone might have had to address

Rubin in 1935; correct?

A. Correct.

Q. And then Tom died in 1947, according to the recitations and the recitals in the deed to John. So according to the deed into John Jackson, Tom Jackson died during or about the year 1947.

A. I agree that's what the recitations state.

Q. Okay. So between 1935 and 1947, that's 12 years.

A. Okay.

Q. And that would have been 12 years that Tom had the chance to clear this issue up with Rubin either by getting an access road, access easement, or clearing up this title issue you're referring to.

A. Okay.

Q. And so then Tom dies, as we said, in 1947, and he dies intestate, so that left the property to his heirs, and a number of his heirs got together and conveyed their interest in Tom's property to John in 1969.

A. I agree.

Q. So there's an additional 22 years for Tom's heirs to address the access issue or the extra acreage issue.

A. Okay.

something, so just...

Q. Well, I'm just speaking from the public record, that in 1983 Miss Mills took title to Tom's residual property, and then it wasn't until 2006 that she formally did something to address the extra acreage issue.

A. I agree to the date calculations. I agree to that time frame.

Q. And then we have the Court's order in 2008 that confirms that all that property belonged to Rubin or his heirs. And so it wasn't then until another four years that this suit is brought to address the access issue.

A. I agree.

MR. INGLESE: Your Honor, I'm going to object to the line of questioning. I'm wondering when the question is coming, and essentially Mr. Watts has just testified to a whole bunch of stuff that has mostly already been testified to by the witness, but I'm waiting for a question, and I don't think reciting these dates is -- I think that equates to testifying, and I would object on that ground.

MR. WATTS: Well, I just -- I get the chance to ask direct questions under cross-examination, and Mr. Feeley has confirmed these time frames, and anybody

1 can look at these deeds and these lawsuits and make the
2 calculations themselves.

3 THE COURT: I'll overrule the objection. I
4 think it goes to the defendants' position regarding the
5 timeline and the timeliness defenses to the statute and
6 to laches.

7 BY MR. WATTS:

8 Q. Now, according to Miss Mills's pretrial
9 brief, she asserts that this final order, the 2008
10 order, caused or created the severance creating the
11 necessity for the access easement; is that right?

12 A. I don't know if I've ever actually seen that
13 document.

14 Q. Okay. But you understand the elements of
15 the easement by necessity requires a severance --

16 A. Yes, I agree with that.

17 Q. -- of property by the single title holder?

18 A. I agree.

19 Q. And you understand that the concept of
20 severance would require a conveyance of title?

21 MR. INGLESE: Objection. The question asks
22 for a legal conclusion from the witness regarding what
23 this Court determines to be a severance, and that's not
24 the purpose of an expert witness on title examination.

25 MR. WATTS: Well, he's an expert witness,

1 A. Well, to the extent -- I would -- to the
2 extent that the order references to, say, for example,
3 a plat that would then depict a particular piece of
4 land, I think you could say that the order incorporated
5 that plat, and, therefore, it described a particular
6 piece with particularity.

7 Q. But this order doesn't reference a plat.

8 A. It does at the top of page 3.

9 Q. All right. Would you also agree that there
10 isn't any appurtenance clause in this order?

11 A. Okay. I agree with that.

12 Q. And no habendum clause?

13 A. I agree with that.

14 Q. And would you agree the order is not signed
15 by two witnesses along with Judge Watson's signature?

16 A. I agree with that.

17 Q. Now, Miss Mills's case is based on a
18 right-of-way by necessity.

19 A. That's my understanding.

20 Q. And you're familiar with that -- that legal
21 concept of an easement by way of necessity?

22 A. I am.

23 Q. And you understand that ordinarily an
24 appurtenance, that -- that the law implies that the
25 grantor has given to a grantee of property?

1 and he's there to give opinions.

2 THE COURT: I think his expertise was as to
3 the title examination, not as to the law in general, so
4 as far as the ultimate questions, I'll sustain the
5 objection.

6 MR. WATTS: Okay. Thank you, your Honor.
7 BY MR. WATTS:

8 Q. Well, let's continue to look at Exhibit 10.

9 A. Could you refresh me on what Exhibit 10 is?

10 Q. Oh, yeah. I'm sorry. Exhibit 10 is the
11 final order.

12 A. Okay.

13 Q. Now, you'll agree that this final order does
14 not include any words of grant bargain and sale?

15 A. Give me just a minute. Okay. I agree.

16 Q. And you'll agree that the order doesn't
17 describe any land?

18 A. I don't exactly agree with that. The order
19 does reference certain tax map numbers. The order
20 references a plat recorded at plat R260A, so TMS number
21 017 is referenced in the order. So there are
22 references to pieces of lands. There's no set out
23 legal description in the order.

24 Q. There's no description with any
25 particularity.

1 MR. INGLESE: Objection. We're getting away
2 from title examinations again and getting into
3 questions of law that is not within the parameter --

4 THE COURT: I'll sustain the objection.
5 You're asking for definitions of law.

6 BY MR. WATTS:

7 Q. But you do understand that Miss Mills is
8 seeking an easement across this lower portion of the
9 Rubin property that's identified with the tax map
10 number 113?

11 A. It's my understanding that she's seeking an
12 easement through the Rubin lands. Exactly where it's
13 supposed to be placed, I honestly couldn't answer that.

14 Q. And you understand that she's seeking that
15 easement to connect her interior property with a public
16 right-of-way?

17 A. That's my understanding.

18 MR. WATTS: Okay. Thank you, Mr. Feeley.
19 No other questions at this time.

20 THE COURT: Any redirect?

21 MR. INGLESE: Yes, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. INGLESE:

24 Q. Mr. Feeley, based on your testimony and your
25 examination of the public records, is parcel number 016

Page 74

1 **landlocked?**
2 A. I would say yes, right now it is.
3 **Q. It has no means of access to a public**
4 **right-of-way?**
5 A. No.
6 **Q. On cross-examination, you were questioned**
7 **about the 1930's deeds, but I want to bring your**
8 **attention back to Exhibit 7C and the two deeds,**
9 **particularly the deed from Mildred to Russell Jackson**
10 **and the other deed from Mildred and Russell to Janet**
11 **Hudson.**
12 A. Okay. I have them.
13 **Q. If you will look, in those deeds, is there a**
14 **property description?**
15 A. Yes.
16 **Q. And what degree of detail is included in**
17 **that property description?**
18 A. Well, essentially, this is a legal
19 description that references to a recorded plat and
20 incorporates the area depicted on the plat by reference
21 as the legal description. It's 1.56 acres identified
22 as Tract A on the plat recorded in book O244Q. That's
23 the deed to Henry Russell Jackson. The other one is
24 very similar, except it transfers Tract B on that same
25 plat to Janet Lynne Hudson.

Page 75

1 **Q. And would you agree that these deeds have**
2 **the benefit of modern technology and modern methods of**
3 **property descriptions?**
4 A. They were done in 2011 and, you know, I
5 agree that they reflect that.
6 **Q. That they reference a plat; correct?**
7 A. Correct.
8 **Q. And that plat has survey boundaries and**
9 **presumptively utilized modern instruments?**
10 A. Yes, I would presume so.
11 **Q. And do you take these property descriptions**
12 **as accurate?**
13 A. They are what they are. They -- you know,
14 they have a plat that they refer to, and you can look
15 at that plat, in fact, a subdivision plat because it
16 subdivides and reconfigures pieces of property. Under
17 the modern standards for recording, for example, you've
18 got to have a subdivision plat to -- basically to
19 change the property boundaries.
20 **Q. And that was because of the 2008 order?**
21 A. These were after the 2008 order, and they
22 essentially reflect the Court's conclusions in the 2008
23 order as to the property.
24 **Q. But before these, there was no plat or deed**
25 **since the 1935 deed affecting these lands?**

Page 76

1 A. Aside from the one deed out from Rubin to
2 the Mullinaxes for the one acre, there were none.
3 **Q. And when you're doing your title searches**
4 **and you come across old deeds, you pointed out things**
5 **that are in those deeds that might not be in today's**
6 **deeds. We didn't have degrees. I think Mr. Watts**
7 **pointed out that the compass call may not be in an**
8 **older deed. But there are things in those older deeds**
9 **that you do rely on when making an opinion or an**
10 **assessment of a title; correct?**
11 A. Yes.
12 **Q. Such as adjacent property owners?**
13 A. Yes.
14 **Q. And sometimes roads?**
15 A. Yes.
16 **Q. And north arrows?**
17 A. Yes.
18 **Q. Directional calls?**
19 A. Yes.
20 **Q. Acreage amounts?**
21 A. Yes.
22 **Q. And based on all the information available**
23 **to you, you made your best effort in identifying the**
24 **lands that you've testified to earlier?**
25 A. That's correct.

Page 77

1 **Q. And you think a 50 percent error in acreage**
2 **with regards to Rubin's two acres, which the defendants**
3 **want to be three acres and which ultimately became**
4 **or -- Excuse me -- Rubin's three acres which ultimately**
5 **was determined to be four acres, is a 50 percent error**
6 **unusual in your experience?**
7 A. Yes. That -- that's why I suggested that
8 this would have been a flag to me and was a flag to me.
9 For three acres to be turned into four acres or two
10 acres after the one acre to Mullinax to be turned into
11 three acres seems -- seems like, even in my experience
12 looking at older deeds, to be a large deviation. Now,
13 like I say, had this been a thousand acre tract and it
14 was one acre, okay, you know, maybe, but this is --
15 That's why -- that's why I said, really, in looking at
16 this title, the first time that I think there's any
17 clarity that -- with regards to the property and the
18 owner of the lower residual property would have been
19 that 2008 order, because up until that point, in my
20 mind, there's a question.
21 **Q. And did the 2008 order identify a year or**
22 **specific time in which ownership vested in the**
23 **defendants?**
24 A. No, there's no year stated. There's two
25 theories. One is adverse possession, which, you know,

I don't have the testimony, I don't know what was testified to, but that would have taken place over a period of time, and how adverse possession would work, you know, unless you have color of title, you would actually be possessing what you're actually occupying. So just from the public record, what I've looked at, you know, I couldn't tell you a date for when you could say, Yes, we know at this date that adverse possession would have been completed.

Q. And the Court didn't provide a date in 2008?

A. It does not.

Q. And earlier you testified you've done over 6,000 title examinations?

A. Yes.

Q. Of those, how many landowners have conveyed out properties in a manner in which they, according to Mr. Watts, voluntarily and intentionally landlocked themselves?

A. This exact scenario, I essentially have seen in this case, with these titles. I've worked, you know, numerous easement by necessity cases. Honestly, I couldn't say. I would have to go back and really look at some of my old files to refresh myself. I just couldn't say.

Q. Is it safe to say it's a fraction of your

passed through probate?

A. Yes, it passed through probate.

Q. So no consideration in those transfers.

A. Agree.

Q. So these were family conveyances?

A. That's -- Yes, it looks like that's the case.

Q. And there may have been a family arrangement with regards to access to this landlocked property?

A. It's certainly possible.

Q. Does it strike you as odd that a landowner would intentionally landlock themselves?

A. Yes, it does. That's actually another reason that I -- when we're talking about three acres turning into four acres, you know, my gut, if you will let me just tell you, was that it actually was a reserved access, that really three acres was three acres and it was an area reserved, but, you know, we've seen the deeds and we see what they say.

Q. These are family interactions from the deeds that you observed?

A. All the deeds that we've been talking about here today.

Q. So if, indeed, your instinct is right on that, there would be no need for Miss Mildred and my

overall title searches?

A. Yes.

Q. A small fraction?

A. Yes, very small fraction.

Q. Very small fraction. And in considering the conveyances in this case, how many of these conveyances had consideration of any substantial amount?

A. You mean monetary consideration?

Q. Yes.

A. One moment, please.

Well, it looks like the deed where Miss Jackson obtained the 1/6 interest that was Bessie's interest, it looks like she paid a thousand dollars for that. It looks like the deed out from Tom Jackson --

Q. That's the deed that my client sought from the 1/6 interest remaining in order to be able to have fee simple ownership of 016?

A. That's correct.

Q. So she paid out a thousand dollars. What about the conveyances from Rubin Jackson?

A. Okay. The deed into Rubin Jackson is a nominal consideration. And, actually, the consideration stated on the deed from Rubin to Mullinax is five, five dollars.

Q. And the subsequent -- the subsequent acreage

client's ancestors to take any action.

A. Well, that's true.

Q. And, indeed, if there was an agreement amongst the family members, there would be no need for my client to take any action.

A. Sure.

Q. In your experience, do court orders have an effect on title?

A. Absolutely.

Q. Can court orders convey title?

A. I don't know if I would use exactly the word "convey." They can certainly confirm title. They can also award title where it wasn't already -- you know, in a person -- for example, in a partition action perhaps, you know, you're awarded interests that weren't yours, so I would use the word award or confirm.

Q. Can a court order change title?

A. Yes.

Q. Are there other operations of law that affect title?

A. Conveyances by a deed, for example, devise through a will, inherit through intestacy. Is that what you're asking?

Q. Bankruptcy?

A. Bankruptcy, I -- I would -- short answer is yes. I'm not -- I think that the bankruptcy trustee essentially can transfer title out of the debtor's name by signing a deed from the trustee.

Q. And is it your understanding that the 2008 award created ownership in the defendants where otherwise it was unclear?

A. Yes, I would say absolutely where it was otherwise unclear.

Q. And the court order of 2008 references the TMS number?

A. Yes, it does.

Q. And would you agree that a TMS number is a description with particularity?

A. I don't know if I would wholly agree with that. I think it can in a particular set of circumstances. I think if there was a deviation between a tax map number and, you know, what's plainly stated on the record in plats -- I mean, what I'm getting at is the taxing authority could get it wrong, they could make an error and draw the line in an improper place.

Q. So the tax map number and a plat reference, would that be sufficient particularity for your title examination work?

MR. WATTS: Yes, your Honor.

RECROSS-EXAMINATION

BY MR. WATTS:

Q. Mr. Feeley, going over to Exhibit 9. This is the set of property cards that you collected from the Berkeley County tax department or GIS department.

A. Okay. I have it.

Q. And you had on each of these sheets, each sheet refers to a separate tax map number that you've talked about today that's shown on Exhibit 2; right?

A. That's correct. Some of the pieces have been further subdivided since some of the deeds we've talked about. For example, the property in the lower, well, we'll say the southeast corner that was Clark, that's been subdivided, that acre has been subdivided into three separate pieces in the current map system.

Q. And you had done a little calculation earlier to come up with -- What did you say? Twelve acres?

A. Twelve acres based on the numbers that are on these cards.

Q. All right. But you have no idea how those numbers were derived.

A. Well, that's true. I'm reading it off the card. These are prepared by the auditor's office, and

A. I'm not sure.

Q. This is generally speaking.

A. Could you ask me again? I'm sorry.

Q. Sure. Mr. Watts had asked you about a description of the property with particularity with regard to the 2008 court order.

A. Okay.

Q. And I just want to know, is the court's references to TMS number and a plat, is that sufficient particularity for your title examination purposes?

A. Yes. I take the references to TMS numbers in the Court's order to essentially mean that the Court is adopting the area comprising that TMS number as the property it's attempting to identify. That's how I would read that in the order.

Q. And when a court order or an operation of law affects title, in your experience as a title examiner, is there appurtenance clauses and habendum clauses and probate signatures when court orders are impacting title?

A. No, typically that would not be in the order.

MR. INGLESE: Thank you. Nothing further.

THE COURT: Any further cross-examination, Mr. Watts?

it's available to the public. My understanding is that's the acreage they base their tax billing on.

Q. Yeah. You don't know how they calculate that.

A. I do have some -- I have actually seen them calculate it before. Essentially, they have sophisticated software that they can draw lines over the tax map, and it will tell them an area.

Q. But for these particular pieces of property, you don't know how they came up with these acreages?

A. Okay. I -- No.

Q. And in conjunction with this lawsuit, nobody's arranged to actually do a survey of all of this property?

A. I don't know the answer to that. All I can tell you is if it has been done, I would have found it in my title search if it was recorded.

Q. I mean in conjunction with this lawsuit, you're not aware that Miss Mills commissioned a survey of each of these lots to figure out the acreage?

A. It does seem to me that there may be an unrecorded survey, but -- because when we were -- basically, just when we were looking at the exhibit list earlier, so I -- I don't have that in front of me. If you'd show it to me, then...

1 Q. Well, you haven't seen any kind of -- you
2 haven't been shown a survey of this entire area that
3 used to be Lot 11?

4 A. No.

5 Q. You haven't seen any surveys of each of
6 these individual lots.

7 A. No, although some of the further
8 subdivisions, say, for example, the Clark piece, I
9 think there are surveys for some of those pieces.

10 Q. But you haven't seen -- what I'm getting at
11 is you haven't seen surveys of all of this property in
12 order to confirm exactly how many acres are there.

13 A. No.

14 MR. WATTS: Sorry, your Honor. I've got a
15 few more questions, but I'd kind of like a comfort
16 break. Can we do that?

17 THE COURT: I was thinking the same thing.
18 If we take a break now, we'll go ahead and take it for
19 lunch. Is an hour enough or are you going to need more
20 than that?

21 MR. WATTS: An hour is plenty for us.

22 THE COURT: Hour okay?

23 MR. INGLESE: That's fine.

24 THE COURT: We'll do that. We'll start a
25 couple minutes after 2:00. You can finish the cross,

1 or in the city?

2 A. I'd say it's in the country.

3 Q. Do you know what was going on out there in
4 1935?

5 A. No.

6 Q. You don't know how the property was being
7 used?

8 A. No.

9 Q. And I think we've decided that Tom Jackson
10 and Rubin Jackson and John and Fred were family. Tom
11 was the daddy, and Fred and John and Rubin were the
12 sons?

13 A. That's what it looks like from the various
14 deeds and estate records.

15 Q. You have no idea what Tom was thinking when
16 he conveyed this property out to his sons?

17 A. No.

18 Q. You have no idea what he had in mind, what
19 he planned, any of that?

20 A. All I have are the deeds, so no.

21 Q. No idea what he was thinking when he
22 conveyed everything out and reserved that little -- a
23 little section in the middle at the bottom for himself.

24 A. No.

25 MR. WATTS: Okay. Thank you very much.

1 and we can move from there. Okay?

2 MR. WATTS: Thank you, your Honor.

3 THE COURT: All right. Mr. Feeley, you're
4 still under oath, and we'll see you back in an hour,
5 too.

6 THE WITNESS: Thank you, your Honor.

7 THE COURT: All right. Thank you all.

8 (Recess taken.)

9 THE COURT: Mr. Feeley, you're still under
10 oath. Where we left off, it was the follow-up on the
11 cross-examination, back to Mr. Watts.

12 MR. INGLESE: I did actually want to ask the
13 Court to strike the last couple of questions on tax --
14 this exhibit as outside the scope of my redirect. I
15 didn't ask any questions about this, and now it's being
16 brought up on recross, and so I wanted to strike and
17 move and object on the grounds of outside the scope of
18 my recross or my redirect.

19 THE COURT: Are you going to be going into
20 the tax records anymore?

21 MR. WATTS: No, your Honor.

22 THE COURT: I'll overrule the objection.
23 It's cross, so...

24 BY MR. WATTS:

25 Q. Mr. Feeley, is this property in the country

1 THE COURT: All right. All done?

2 MR. INGLESE: Nothing further.

3 THE COURT: Mr. Feeley, you can step down.
4 Thank you, sir.

5 Call your next witness.

6 MR. INGLESE: Your Honor, my assistant just
7 stepped out to find her. Again, she should be in the
8 building and on her way up. So I apologize for the
9 inconvenience.

10 THE COURT: Who is that?

11 MR. INGLESE: Miss Mills, the plaintiff.

12 THE COURT: So the plaintiff will be
13 testifying next?

14 MR. INGLESE: Yes, sir.

15 THE COURT: Okay.

16 Miss Mills, come on up here. I think you're
17 next up. Come on right up there. We're going to get
18 you sworn in. Sit down right there. Put your left
19 hand on the Bible and raise your right hand. Can't
20 hardly see you down there.

21 (Witness sworn.)

22 THE COURT: All right. Why don't you tell
23 us your name, and spell your last name just so that the
24 court reporter can make sure and get it all down okay.

25 THE WITNESS: Okay. My name is Cynthia J.

Mills, and I go by Jackie Mills, Jackie Jackson Mills or Cynthia Jacqueline Jackson Mills.

CYNTHIA JACQUELINE JACKSON MILLS

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. INGLESE:

Q. And you are the plaintiff in this case, right, Mrs. Mills, Miss Mills?

A. Yes, sir.

Q. And you've been present in the courtroom during testimony of the expert witness, Mr. Charles Feeley?

A. Yes, sir.

Q. And you've heard the testimony regarding the conveyances of the property from Mr. Thomas Jackson?

A. Yes, sir.

Q. Who was Mr. Thomas Jackson?

A. He was my grandfather.

Q. And are you familiar with the parcels that Mr. Feeley has been talking about?

A. Yes, sir.

Q. And do you concur with Mr. Feeley's testimony regarding the historical conveyances and represented in the public records and in the deeds that Mr. Feeley referenced?

interest of interest in the property.

Q. Do you remember how much you paid the 1/6 interest holders?

A. Right. I paid them a thousand dollars total. It was \$200 apiece. There was five of them.

Q. And is it your understanding that at that time you became the sole --

A. The sole owner of the 016, yeah.

Q. And prior to that time, what is your understanding regarding how access to 016 was obtained historically or previously to your ownership?

A. Well, we always had access to it. When we got Pudgy Mason to survey it off, he just squared it off, okay, back in the day. But, anyway, we've always went through, okay, the 017 property to get to the 016, and it was always understood, and when my uncle passed away in '85, we -- you know, it became an issue at that point, you know.

Q. And when you refer to 017, today --

A. Which is --

Q. -- that would include what we're looking at?

A. 017 and 133. Is that correct?

Q. 113.

A. 113. Okay.

Q. The area just south of what's today 017.

A. Yes, sir, I do, I agree, I concur with it.

Q. And you heard -- you heard Mr. Feeley talk about or at least confirm some of the timelines that Mr. Watts talked about with regard to the conveyances of 016, the property that you are the owner of?

A. Yes, sir.

Q. Can you just briefly summarize how you became the owner of 016?

A. Well, the whole 10.3 or more or less acres was my grandfather's, and then, actually, the 016 is -- he left it to me in the will. Okay? And then it was -- I have ownership of 5/6. And all of the aunts and uncles had -- they had signed over their rights to, you know, the property and everything to my dad. Okay? Back in '69, I believe it was. Even my uncle Rubin. And it states on that deed, also, my aunt Lurline Jackson, she signed it also saying that they -- you know, the residual for the -- the 016 and the residual property of the Thomas Jackson estate, okay, whatever remainder.

Q. So you had 5/6?

A. 5/6 interest. And then 1983 I hired an attorney, okay, and we did the -- from -- we found those heirs, which was Aunt Bessie's children, okay, we found them, and I paid them off for the remaining

A. Right. Right.

Q. Would you like to show the Court -- Can you just point to the area that your understanding historically of where access to 016 would have been?

A. It would have been from the -- and I understood that I owned it.

Q. You can take this blue marker and just mark your understanding.

A. My understanding is that --

Q. 17A?

A. Yeah. We always went in here. We always came in here. From here, you know, we come in this way and come in here.

Q. Okay. Thank you.

A. It was probably to this area in here, because there is a ditch that runs in this line right here. I don't know whether that's been brought about, but there is a ditch. The county doesn't own it. The state doesn't own it. But it's always been a ditch right there along the side. So I've always went in, you know, we crossed over this property to get there. But it became an issue back in 1985 when -- after my uncle passed away. But my dad accessed it that way, and so did I, anybody, to get to that property. We'd walk from one parcel to the other parcel, and we would

1 go in that way.

2 Q. I'm going to show you Plaintiff's Exhibit
3 11.

4 A. Right.

5 Q. And tell the Court your understanding of
6 your parcel 016 as it's represented in -- First of all,
7 what are you looking at?

8 A. I'm looking at a GIS map of 2017, but also
9 my property is adjoining that property and with access.
10 This is a survey plat that I had, and I had recorded it
11 in the Berkeley County Courthouse.

12 Q. So on the GIS map is a plat. Can you open
13 that to the second page and take a look at that plat?
14 Do you recognize it?

15 A. Yes. This is a plat that I have recorded
16 that Ashley Surveying done, and instead of them just
17 doing the survey of just, like, 2016 or anything, I
18 said that I needed all of the parcels, you know, and
19 that I wanted to make sure that my Aunt G and my Uncle
20 Rubin -- well, Aunt G was still alive at that time --
21 that she had her remainder, her two acres, whether I
22 got more or less, you know, whether I was -- had less
23 property or not, you know, so I wanted to have access
24 in and out, you know, there.

25 Q. And that image on the plat is a flag-shaped

1 she called her husband and said, "Hey, they about to
2 fight," whatever, okay, because I said I was going to
3 put a road down in there to go there, and she said,
4 "Oh, hell, no, you're not," you know, and...

5 Q. So here we are today?

6 A. Yeah, we're here today. And then, also,
7 spoken with Russell, and he also mentioned something to
8 my nephew, it would be a cold day in hell before I got
9 back there.

10 And I mentioned one time to Miss Mildred
11 Hudson that I was going to put some trailers back
12 there. We were sitting on the steps of Aunt G's. And
13 she said, "Oh, hell, no, you won't." So nothing's been
14 settled. I mean, I wouldn't do them like that at all,
15 you know. I mean, this thing should have been settled
16 a long time ago. And my understanding is that I own
17 the property. My uncle, before he passed away, said I
18 owned the property along the ditch line, okay, that I
19 own that.

20 Q. That was your understanding?

21 A. My uncle. Yes.

22 Q. From uncle --

23 A. Uncle Rubin Jackson, which is the dad,
24 Russell and Midge's dad, that I own that property
25 there.

1 lot?

2 A. Yeah.

3 Q. Do you understand what a flag-shaped lot is?

4 A. Yes, uh-huh.

5 Q. So you used the flag pole portion of that as
6 your access to 016?

7 A. Right.

8 Q. Who is Rubin Jackson?

9 A. Rubin Jackson was my dad's brother, my
10 uncle.

11 Q. And Fred Jackson, who's Fred Jackson?

12 A. He's my uncle, my dad's brother.

13 Q. And your father was?

14 A. John H. Jackson.

15 Q. After Rubin died, Rubin, your uncle --

16 A. Yes.

17 Q. -- did you speak to your cousins or anyone
18 about this property?

19 A. Right. Yes, I did.

20 Q. Who did you speak to?

21 A. Well, after my uncle had passed away, that
22 was in '85, actually, I went over and I said I was
23 going to put in, you know, a road going down in there,
24 and I talked to Miss Mildred Hudson, and she and I
25 about hooked up fighting in the bathroom, and Aunt G,

1 Q. And how did you come to that understanding?

2 A. Because he told me over and over. And I was
3 going to put a road in there, but he passed away, so...

4 Q. Did you ever talk to your father about --

5 A. My father died on Mother's Day, May the
6 12th, 1974. I had just turned 18 years old and had not
7 graduated yet from school. I graduated in May, May the
8 28th. He died May the 12th.

9 Q. So you relied on the conversations with your
10 uncle?

11 A. Right. And then trying to figure out what's
12 what and...

13 Q. And after he died, you've been unable to get
14 any satisfaction from the defendants.

15 A. Right.

16 Q. And --

17 A. There was a lot of animosity and stuff,
18 whatever.

19 Q. You filed a quiet title action in 2006?

20 A. Yes.

21 Q. I'm sure you're familiar with that.

22 A. Yes, sir.

23 Q. And why the timing of 2006?

24 A. Oh, because that was when they had -- they
25 had put a mobile home over there on the property, okay,

and actually blocking that entrance, whatever, and so they put a mobile home there. It was a 1998, because I went under the Freedom of Information Act and got the copy of the septic tank that -- application and stuff. And I filed it in 2006 because it was before the ten years was up for adverse possession.

Q. So they put a trailer -- I'm going to mark an X with the red marker --

A. Right.

Q. -- about here on --

A. Right. There was a couple of them. One of them they tore down, and it's showing it on this plat right here, encroachments, whatever.

Q. And that was in 1996?

A. '98, I believe it was.

Q. So you filed because you were concerned about some legal statute of limitations?

A. Yeah. Adverse possession I believe is 10, so I filed it before the 10 years was up.

Q. And you're familiar with the 2008 order of the Court?

A. Yes, I am.

Q. And that was found in favor of the defendants, so you are not the owner of that property; correct?

Q. And we presented that to the other side?

A. Yes, sir.

MR. INGLESE: Thank you. At this time, your Honor, we'd like to submit Exhibit 12 to the Court.

THE COURT: Any objection to 12?

MR. WATTS: No objections.

THE COURT: All right.

(Plaintiff's Exhibit No. 12 admitted into evidence.)

BY MR. INGLESE:

Q. Now, that plat has one location for a proposed easement. Are you dead set on that location?

A. No, sir. I just -- I need access to the property, ingress/egress, and it doesn't matter where it's at, I mean.

Q. Do you remember the minimum width that the county requires for an easement?

A. I think it's 25- or 30-foot easement. I'm not quite sure.

Q. Do you know about how far the trailer marked with the X is set off of this southern property boundary?

A. No, sir.

Q. I'm going to show you Exhibit 7D. This is Exhibit 7D, and it does give you a dimension. Can you

A. Correct.

Q. However, as a result of the Court's order, have you been able to access your property?

A. No. No, sir, I have not.

Q. And have you attempted through counsel, through me, to resolve this issue with the other side?

A. That's why we're here today, yes, sir. It needs to be settled.

Q. I'm going to show you what's been premarked as Plaintiff's Exhibit 12. Tell me and the Court if you recognize this plat.

A. Yes, sir.

Q. And what do you see there? Describe for the Court what this plat is showing.

A. The plat is showing the 10.3, more or less, acres, plus it's showing the proposed easement of ingress/egress.

Q. And how wide is that proposed easement?

A. A 30-foot proposed ingress/egress.

Q. Where did this plat come from?

A. General Utility. Ashley Surveying.

Q. And who requested this plat?

A. You did and I did on my behalf.

Q. Did you pay for this plat?

A. Yes. Yes, sir.

read that dimension of the setback of the trailer from the property line?

A. Fourteen foot.

Q. Thank you. Prior to the 2008 order, did you think that you were the owner of this residual tract that we've been talking about?

A. Yes, sir, because my father left the 5/6, and then when he passed away, in the will, and then the 1/6 I got from the remaining heirs of Bessie Jackson because all of the other brothers and sisters had signed it over to my dad, remaining of the Thomas Jackson estate was signed over, okay, to my dad, and then -- so that's why I understand I was the owner of the property, because that was the remaining property that was left.

Q. Did you meet your grandfather?

A. No.

Q. Thomas Jackson?

A. Huh-uh. I was born in '56. He passed away in, I think, '47.

Q. So, again, you relied on your uncle --

A. Uh-huh, yes.

Q. -- the only one of the family, to access your property?

A. Yes.

1 Q. And once he passed away, everything was in
2 limbo.

3 A. Right. Yes, sir. But also make a point is
4 that I'm supposed to have two acres, more or less, and
5 then also make the point is that my uncle, he got three
6 acres and --

7 Q. Your uncle who?

8 A. My uncle Rubin got three acres from my
9 grandfather. All right? And he gave one away to
10 Holroyd Mullinax, an acre, so that left him with two
11 acres. And if you go back to the probate court, it
12 says that they have two acres, and if you go back to my
13 uncle's will, which is Rubin's will, if you go back to
14 that, it was stated in there that he only has two
15 acres, and he has in that will butting and boundaries,
16 okay, of where their two acres was supposed to be
17 divided and to butt up to Holroyd Mullinax. Each one
18 of them -- Russell is supposed to get the house and the
19 frontage road on front. Midge is supposed to get the
20 other acre, frontage road. And it is supposed to be
21 Holroyd Mullinax's partial property that my uncle gave
22 to him or sold it to him for five dollars. And it
23 states that in the will on how it's to be divided. So
24 they only would have two acres left. And when I had
25 the plat done, all of the property surveyed off and

1 everything, okay, I wanted to make sure that everything
2 was like it was supposed to be and that I didn't end up
3 with any more property than what I was supposed to and
4 they had their full two acres like it called for, that
5 my uncle left in his will, and then -- and I had made
6 copies of the will and left it over at my aunt's house
7 so that they could see how that it was supposed to be
8 divided. Each one of them was to get frontage and then
9 go straight back to meet Holroyd Mullinax, and it says
10 so in the will.

11 Q. I'm going to show you a part of Plaintiff's
12 Exhibit 8, and this is the portion of the deed to you,
13 and there's a property description that begins, "All
14 that certain piece, parcel or lot of land..." If you
15 will, just read that first sentence. You mentioned
16 earlier, you testified as to the two acres more or
17 less. Read exactly from this that supports your
18 testimony that you gained two acres, more or less.

19 A. Okay. (Reading) That all -- all that
20 certain piece, parcel or lot -- all that certain piece,
21 parcel or lot of land situated, lying and being in
22 Saint John's Parish, Berkeley County, South Carolina,
23 measuring and containing two acres, more or less,
24 butting and bounding as follows: On the north by lands
25 of Rubin Jackson...

1 Q. That's good. Thank you. And what is --

2 A. That would have been north of Rubin Jackson.

3 Q. Okay. And that's 016 is being conveyed to
4 you in this deed?

5 A. Right, yes, sir, and that piece there.

6 Q. This is Exhibit 12, the survey that you
7 requested of Ashley Surveying, and it identifies the
8 acreage on 016. What's the acreage of 016 according to
9 the Ashley Surveying survey you requested?

10 A. Okay. The 016 is 1.887 acres.

11 Q. Thank you.

12 A. That was done in '82.

13 Q. So that's less than the two acres, more or
14 less, that was deeded to you..

15 A. Yes.

16 Q. And according to the tax records in Exhibit
17 9 --

18 A. It states two acres.

19 Q. -- you're paying taxes on how much acreage?

20 A. Two acres. I've always paid taxes on two
21 acres. It's never been changed.

22 Q. But you were deeded two acres, more or less.

23 A. Yes, sir. And going -- I don't know. May I
24 say something?

25 Q. Yes, you can.

1 A. Okay. I just wanted to say that going back
2 to all of the property there, okay, my grandfather
3 dated -- deeded, okay, three acres to my uncle Fred; he
4 deeded the three acres to my uncle Rubin, okay, and
5 then he also -- so that would have been the two -- two
6 acres, more or less, would have been my dad's three
7 acres, okay, in there that he should have gotten,
8 actually. Okay? But my dad bought the property from
9 Uncle Fred, so that has nothing to do with this, the
10 018 he bought from Uncle Fred, so that three acres he
11 bought from him. But my grandfather did intend to
12 convey over actually the other two acres, more or
13 less -- they weren't sure exactly how much it was -- to
14 my dad because Uncle Fred got his three acres and Uncle
15 Rubin got his three acres, and my dad should have
16 gotten his three acres. So with the two that's being
17 in the square, 016, and that coming down there should
18 have been my father's three acres because he had three
19 sons, and so that would have been the remainder of the
20 property.

21 Q. And did you have any reason to start a
22 lawsuit before the trailer arrived in 1998?

23 A. No, because, I mean, we always went back and
24 forth across there.

25 Q. And since the Court's order in 2008, you've

1 had some personal issues; correct?

2 A. I've had some financial and medical issues,
3 yes.

4 Q. And that has made it difficult to follow
5 through on the needed access until just a couple years
6 ago when you came to my office; right?

7 A. Right. That's right, yes, sir.

8 Q. And you have your own kids?

9 A. Yes. I have three boys, three sons, three
10 grandchildren.

11 Q. And is it your desire to get this issue
12 resolved?

13 A. Absolutely. I don't want my kids to have no
14 idea. I mean, they know some of it, but they don't
15 know it all. But it needs to be resolved. And I need
16 access because I've not been able to benefit from this
17 piece of property at all since my father passed away in
18 1974, so this piece of property is sitting there.
19 Okay? I'm paying taxes on it. I've paid taxes on it
20 since 1974, with not being able to, you know, to use
21 it, to make anything -- any money off of it or anything
22 like that, you know?

23 Q. What is your --

24 A. And what I do is my -- what -- I have rental
25 property and stuff like that, so I have a -- on that

1 018, I have a four-bedroom house, and I have five
2 mobile homes on that, okay, and I've had to, because of
3 not accessing that piece of property.

4 Q. This parcel here, 018, you --

5 A. Right.

6 Q. -- have rental properties there that you
7 mentioned?

8 A. Yes, I do. And then I've had to put -- my
9 cousins and them own a mobile home park, and I've had
10 to put mobile homes in their park because of not being
11 able to access that property. I probably have about,
12 I'm going to say, five or six there at that location.

13 Q. And you manage some properties off-site as
14 well; correct?

15 A. Yes, I do.

16 Q. And you spent considerable money on this
17 litigation?

18 A. Absolutely. And it's really been
19 unnecessary, but yes, I have. I've spent \$15,000 with
20 you or better, and before, and time, time and
21 everything else, I mean, you know.

22 Q. Did you explore opportunities for access
23 from the neighbors to the south?

24 A. Yes, I did. And when my -- I went to Miss
25 Dangerfield, who owned the property which Mizzell owns

1 it now, which is the one that's up above mine in front,
2 and I went there and I asked her about, you know, going
3 through there to get there, and she said, "Your daddy
4 owns that piece of property across that ditch right
5 there. That's Mr. John Jackson's property right
6 there," Miss Dangerfield said. Okay? That's Mr. John
7 Jackson's property."

8 MR. WATTS: Objection. This is hearsay.

9 A. But -- Okay.

10 THE COURT: I'll overrule the objection.

11 BY MR. INGLESE:

12 Q. You may continue.

13 A. "That's Mr. John Jackson's property right
14 there." Okay? And then she had signed that piece of
15 property, the one that was in front, over to her
16 daughter, and I offered to buy it, I wanted to buy it
17 from her, you know, because it's adjoining my piece of
18 property, and so, anyway -- and, actually, one time I
19 had Alfred -- I had called Russell and asked him about
20 buying that 016. Okay? I was in a financial jam. I
21 had called him and asked him about buying that. At one
22 time I think I wanted \$15,000 for it. I think that's
23 what the price was. If I'm not correct on the price,
24 I'm not quite sure. But I did ask him if he wanted to
25 buy it at that time, and he said no, so, you know,

1 because I hadn't been able to do anything with it,
2 whatever.

3 Q. This property to the south, it wasn't part
4 of your grandfather's parcel.

5 A. No, absolutely not. That belongs to the
6 Burdens.

7 Q. And this parcel to the east of your 016,
8 this was among the first parcels conveyed out.

9 A. That's Mr. Clark's, yes, and it was an acre
10 given to Mr. Eddie Clark.

11 Q. From your grandfather?

12 A. From my grandfather, Mr. Thomas Jackson.

13 Q. So your grandfather still had plenty of
14 opportunity to get to 016 after conveying out this
15 first conveyance.

16 A. Right, uh-huh.

17 Q. Prior to your filing in 2006, I think you
18 already testified to this, but who -- you thought you
19 owned the property just north of 016 that ran along the
20 ditch.

21 A. Right.

22 Q. That's your testimony; correct?

23 A. Yes, sir.

24 Q. After the 2008 order, it became apparent
25 that you were not the owner.

1 A. Right. Like, Judge Watson ruled in their
2 favor, but it was still unclear on -- the order, to me,
3 was unclear because it didn't state -- he ruled in
4 their favor, but it didn't state where their property
5 was or where my property was or -- you know, he didn't
6 rule in my favor, it was them, but it didn't state
7 where their property was.

8 Q. And it didn't state when they owned it.

9 A. No. It just was unclear. I mean, the order
10 was very unclear to me. Okay? I'm like, well, do they
11 own it? What do they own? I mean, he ruled in their
12 favor, but I mean exactly what you're saying, that the
13 plat I had done was no good, but then, yet, so what do
14 they own? Where are their butts and boundaries, you
15 know, their stakes in the ground? And I don't know. I
16 mean, that was -- that was -- I mean, I was unsure
17 what -- I just wasn't clear. There was no
18 clarification there.

19 MR. INGLESE: Nothing further.

20 THE COURT: Mr. Watts, any
21 cross-examination?

22 CROSS-EXAMINATION

23 BY MR. WATTS:

24 Q. Miss Mills, take a look at Exhibit 8.

25 A. Yes, sir.

1 A. Yes, sir.

2 Q. And on the east by Clark, and on the south
3 by Jones, now Burden, and on the west by Adkins.

4 A. Yes, sir.

5 Q. And the eastern boundary, that comports with
6 what your grandfather conveyed to Ed Clark over here.

7 A. Yes, sir.

8 Q. And the western portion, the western line
9 comports with what your father conveyed to Adkins over
10 here.

11 A. Yes, sir.

12 Q. And the northern line is what he conveyed to
13 Rubin --

14 A. Yes, sir.

15 Q. -- there. And that gave you the two; right?

16 A. Well, I'm not sure exactly where their line
17 is. I was under the understanding before the 2008
18 order that I owned that piece of property there where
19 you put your -- pointed to, whatever, which is the 013.

20 Q. You understood that how?

21 A. How did I understand that?

22 Q. How did you understand that you owned that
23 property up there?

24 A. Because I --

25 Q. Was that because Rubin told you you owned

1 Q. Do you recognize that?

2 A. Yes, sir.

3 Q. That's the deed to your father; correct?

4 A. Yes, sir. That's where all the brothers and
5 sisters signed it over to my father, yes. He
6 petitioned the court. He petitioned the probate court
7 and --

8 Q. That's okay. Let me ask you this.

9 A. I'm sorry.

10 Q. It says it measures and contains two acres,
11 more or less; correct?

12 A. Yes, sir.

13 Q. And the plat you did in 2005 or, yeah, that
14 shows you owning 1.887.

15 A. Yes, sir.

16 Q. So that's pretty close to two; right?

17 A. Almost.

18 Q. It's like 12 hundredths of an acre less than
19 two.

20 A. I'm not quite sure on that, you know. I'm
21 not good at math with those numbers and those figures.
22 But yeah, that's almost two acres, I mean.

23 Q. Okay. Now, the description goes on to say
24 that the property is bounded on the north by lands of
25 Rubin Jackson.

1 it?

2 A. Well, because Rubin told me I owned it, and
3 because, also, I paid off -- I mean, I got it through
4 my dad's will, the remaining of the Thomas Jackson --
5 My father had petitioned -- This is where all the aunts
6 and uncles signed off on the remaining of the Thomas
7 Jackson estate. Okay? My father had gained it through
8 petitioning the probate court. And so he got all his
9 brothers and sisters to sign off on it saying, yes,
10 that he -- he had the remaining two acres, more or
11 less, of the Thomas Jackson estate.

12 Q. So Thomas Jackson estate, the remainder of
13 the Thomas Jackson estate was just two acres.

14 A. More or less. Okay?

15 Q. Yeah. But your surveyor says it was 1.8, so
16 that's -- that's pretty close.

17 A. Excuse me. But what happened is, when I was
18 young, I don't know what date, when it was, I had Pudgy
19 Mason, like I said -- it was before my uncle passed
20 away. I said, "I got two acres over there. Would you
21 survey it off?" Okay? That's it. I was young and
22 just said, "I got two acres over there. Would you
23 survey it off?" Mr. Pudgy Mason did not check on
24 anything or anything. He just squared it off; that's
25 it.

Q. When you're say squared it off --

A. He just squared off, that's it, did a plat, squared it off, and that's it.

Q. Talking about this area right here that's identified as 016?

A. 016, yes. And he just squared it off, that's it. There was no investigation on title search or anything else, okay, to find out or -- Let me just say that. No paperwork to back it up as far as all of this to say, okay, this is -- you know, I'm supposed to have two acres more or less, dah, dah, dah. There was never a survey plat done of my uncle's property either --

Q. Right.

A. -- until after he -- my aunt passed away, and then it was submitted, between, you know, Mildred and Russell.

Q. Later on you got title to this same piece of property via that deed in 1983; is that correct? I think that's part of --

A. This is where my dad, you know, petitioned the court and whatever and got the heirs to sign off. Actually, my uncle Rubin signed off on this, too, saying, "Hey," you know.

Q. And then later on you got title --

willed that to wife, Eunice, for and during the term of her life or widowhood and then on to you.

A. Yes, that's what he...

Q. Let's jump back to -- well, let's look at the legal description again. Property is described as bounded on the east by Clark.

A. Which one are we on?

Q. Either one of those deeds has the same legal description.

A. Okay.

Q. Says bounded on the east by lands of Clark; correct?

A. Yes, sir.

Q. And that's the only eastern boundary. There's no bounded on the east by Mullinax or anybody else, just Clark; correct? That's what the description says.

A. Right. Right. Yes, sir.

Q. And then for the western boundary, it just says bounded on the west by lands of Adkins.

A. Right, yes, sir.

Q. Doesn't say bounded on the west by the highway or anybody else; just Adkins.

A. Right, because that would be the next -- I mean -- I don't know how to say it. Hold up. Because

A. Aunt Lurline --

Q. -- to the property in 1983.

A. Right, yes, sir, from the Bessie -- Aunt Bessie's children, because Aunt Bessie passed away before she signed it over to my dad. Annie Jackson Tisdale, Rubin Jackson, Grace Jackson Davis and Fred Jackson signed this, and their wives signed it, saying that they understood that my dad got the property. Uncle Fred's wife signed this, Miss Lurline Jackson, she signed it, and Miss Grace Davis.

Q. And when you took title -- Look in that same packet. I think you'll find a copy of the deed to you for the property.

A. Yeah. This is where they signed off on it. Okay. I look at this, the deed to the property for me or the will or...

Q. The deed, the deed to you.

A. To me? I see the will. Okay. All right. This is -- Okay.

Q. What's the TMS number on that?

A. The TMS number is 1800002016.

Q. 016?

A. Yes.

Q. And your father's will says, "Two acres of land I purchased from the heirs of my father." He

that would -- I mean, they wouldn't jump and say by the lands of Highway 17A, a public road. Okay? They're referencing the property that's in front, which would be the parcel -- I don't know what -- is it 01 -- 15 maybe? I'm thinking.

Q. These out conveyances by your grandfather Thomas in the 30's, that's well before you were born; correct?

A. Yes, sir.

Q. So you have no idea what your grandfather was thinking or intended when he conveyed that property out.

MR. INGLESE: Objection. Beyond the scope of direct. I simply asked if she knew her grandfather, she said no, and that was the end of that subject matter.

THE COURT: I'll allow it. It's cross-examination.
BY MR. WATTS:

Q. Well, back in the 1930's, you had no idea what this property looked like.

A. No, sir. I wasn't -- I wasn't born until '56. I just turned 59.

Q. You had no idea how it was utilized. You have no idea how the property was being used in 1930.

- 1 A. 1930? No, sir.
- 2 **Q. You said your grandfather intended to convey**
- 3 **some of this property to your father. Is that in**
- 4 **writing?**
- 5 A. No, not that I know of, no, sir. I mean, my
- 6 grandfather passed away before he had conveyed, you
- 7 know, deeded out the other property to my dad, so he
- 8 passed away, and then so my dad petitioned the court
- 9 for the remaining of the Thomas Jackson estate, you
- 10 know, and...
- 11 **Q. All right. But there's no deed on record**
- 12 **from your grandfather Thomas to your father --**
- 13 A. No, sir.
- 14 **Q. -- of any of this property.**
- 15 A. No, sir, but he -- it's just by common sense
- 16 or understood that he gave three acres to Uncle Fred,
- 17 and he gave three acres to Uncle Rubin, and that my
- 18 father was his only other son, that he would have
- 19 conveyed the other three acres that was left to him.
- 20 **Q. Well, that's simply your understanding.**
- 21 A. Yes, sir.
- 22 **Q. You figure three sons ought to get three**
- 23 **acres each; right?**
- 24 A. Three sons, yes, sir.
- 25 **Q. But you have no idea what your**

- 1 **grandfather -- how your grandfather thought about your**
- 2 **father or about Fred or about Rubin.**
- 3 A. No. They all kind of lived in the same
- 4 house together at one point in time. I mean...
- 5 **Q. But you don't know how your father felt**
- 6 **about John.**
- 7 A. My father felt --
- 8 **Q. I mean your grandfather felt about John.**
- 9 A. It was his son. I'm sure he loved him and
- 10 whatever and wanted to provide for him, like most of us
- 11 do want to provide for our children.
- 12 **Q. But those are simply assumptions.**
- 13 A. Yes, that is an assumption.
- 14 **Q. You don't know specifics about their**
- 15 **behavior with each other or how they felt about each**
- 16 **other.**
- 17 A. Right. I mean...
- 18 **Q. You don't have any idea what your**
- 19 **grandfather's plan was with respect to taking care of**
- 20 **his kids.**
- 21 A. No, sir, because I never knew him. I wasn't
- 22 born till after he passed away.
- 23 **Q. You said something about a mobile home**
- 24 **blocking the entrance in 1998. What entrance are you**
- 25 **talking about?**

- 1 A. The entrance there from Highway 17A, which
- 2 is -- you want to call it a public road or -- It was
- 3 known as Route 4 at one time, I mean, from the main
- 4 road in.
- 5 **Q. The main road being Highway 17?**
- 6 A. Highway 17A, yes.
- 7 **Q. And "in" meaning what? From the main road**
- 8 **in, what do you mean by "in"?**
- 9 A. What do I mean by "in"? Accessing --
- 10 ingress and egress, accessing my property.
- 11 **Q. So you're saying there was a road there?**
- 12 A. There is a road there. There is a road
- 13 there that we've used. I mean, we've walked across the
- 14 property. We have -- we have -- because the 018 used
- 15 to be, I mean, the old home place, I mean, you know,
- 16 and we've walked across the property; we've drove
- 17 across the property to get to 016.
- 18 **Q. But I'm understanding you to say that there**
- 19 **was a road from Highway 17 into --**
- 20 A. There is a road. Actually, Russell and his
- 21 wife, Linda, put a trailer there on that piece of
- 22 property, okay, back in the day. I'm not quite sure
- 23 exactly when. Okay?
- 24 **Q. Where was the road located? Exactly where**
- 25 **was the precise location of this road?**

- 1 A. Where was it located?
- 2 **Q. Yeah.**
- 3 A. It was on the property. I mean not on -- I
- 4 mean, I was putting in a brand new road, okay, with
- 5 drainage. I mean it was -- they had a road into there,
- 6 and we've used that road to -- several times to get in
- 7 and out of there. My dad has, too. All right? And to
- 8 go into the property and go down and get into the
- 9 property there. They had a mobile home there. I'm not
- 10 sure what year.
- 11 **Q. Where was the precise location of this road?**
- 12 A. I can't tell you that, sir. I'm not sure
- 13 exactly from that picture to detect exactly where it's
- 14 at.
- 15 **Q. I think you said that there's a ditch along**
- 16 **the property line?**
- 17 A. Yes, it is.
- 18 **Q. So how far off the ditch was the road?**
- 19 A. How far off the ditch is the road? It runs
- 20 from 17A down.
- 21 **Q. Well, when you say "down," what do you mean**
- 22 **by that?**
- 23 A. East.
- 24 **Q. But you don't know exactly where the road**
- 25 **was.**

1 A. There was a road. When Russell and Linda
2 had their mobile home put there, I guess they put in --
3 I'm not sure who put the drive in, but the drive was
4 put in. Okay?

5 **Q. It was a driveway just to their house?**

6 A. It went kind of like in a circle, whatever.

7 **Q. A circular driveway in front of their house?**

8 A. They had a mobile home there. But it was on
9 their property, I mean, pretty much; it was on their
10 property.

11 **Q. But that's the road you're referring to is
12 the circular driveway in front of their house?**

13 A. That we would use? Yes.

14 **Q. Yeah.**

15 A. We've used that. Well, it's not really in
16 front. It wasn't in front. Because they don't even
17 live there anymore. The mobile home is gone. Oh, my
18 god. The mobile home is gone. They don't even live
19 there anymore. I can't remember exactly what year,
20 what date, whatever.

21 **Q. Let's see. That was -- you said that was
22 1998.**

23 A. No. I'm talking -- 1998 is when Janet,
24 which is the granddaughter, put a mobile home there.

25 **Q. Oh, okay.**

1 week after my uncle had passed away and, you know.

2 **Q. Uncle Rubin.**

3 A. Uncle Rubin passed away, and I said, "I'm
4 going to put a drive down there," and I said, "Uncle
5 Rubin said that I can put a drive down there, that I
6 own that piece of property down there, to get to my
7 piece of property."

8 **Q. Yeah. You said Rubin --**

9 A. But you're saying that's hearsay, so I can't
10 say that, so you can strike that from the record. I
11 don't know. Huh?

12 **Q. Uncle Rubin told you you owned the property,
13 but do you have a piece of paper to that effect? Did
14 he sign something acknowledging that?**

15 A. Not that I know of, no, but I acquired the
16 property by -- through -- through my dad's will and
17 also two acres, more or less, okay? Here we go. Two
18 acres, more or less. All right?

19 **Q. But you got the two acres.**

20 A. I got the two acres plus, and I paid off for
21 the 1/6, yes. But they're only supposed to own two
22 acres. And if you go back to Rubin's will and the
23 probate court, Rubin's will, my uncle Rubin's will,
24 will tell you how theirs is supposed to be divided,
25 that they only have two acres.

1 A. Okay? They did that without a survey plat,
2 and they just put it over there. Now, they used to
3 live there. Okay?

4 **Q. "They," you're talking about Henry?**

5 A. Russell and Linda lived on the piece of
6 property, okay, which is -- was the part of the two
7 acres that Aunt G owned for whatever time. I don't
8 know what time length. Okay? But they moved to
9 Charleston, so I'm not sure when they bought the house
10 in Charleston or when they didn't, whatever, but I
11 know, you know...

12 **Q. You mentioned Aunt G. Who is Aunt G
13 exactly?**

14 A. That's Uncle Rubin's wife, Lurline Jackson,
15 which is Russell and Midge's mom.

16 **Q. Okay. You said something about you told
17 Mildred that you were going to put a road in. Where
18 did you intend to put the road? What was the location
19 you wanted that road to be?**

20 A. Down the side, which I thought that I owned
21 the property. Okay? Down the ditch line, down beside
22 the ditch there, that piece of parcel right there.

23 **Q. When did you tell -- when did you tell Miss
24 Mildred that? Do you remember what year that was?**

25 A. Oh, I went to her after -- it was within the

1 **Q. Now, if Rubin had more than two acres, but
2 he willed only two acres, then that's actually Rubin's
3 problem and Rubin's family's problem; right?**

4 A. Well, it seems to all interact there or, you
5 know, interchange, whatever you want to say, because,
6 hey, they're part of the problem with me, I'm part of
7 the problem with them, I guess, because if you're
8 saying that that's their problem, then, you know, it
9 all becomes an issue, and if you're stating and you're
10 trying to say, well, about -- I don't even want to go
11 there, I guess. But, I mean, you put in question their
12 property because when you start questioning my expert
13 witness on butts and boundaries and all this stuff,
14 then you put in question their property, to me. Okay?
15 That's my own opinion, you know. I have an opinion.
16 But when you question my expert witness on the title
17 search that he done and stuff about the stakes in the
18 ground and the butting and the boundaries, then you're
19 actually putting their property that -- you know, their
20 two acres that they have in jeopardy, so --

21 **Q. I see.**

22 A. -- I can say, Hey, theirs is way over there
23 in Timbuktu or whatever.

24 **Q. Excuse me, ma'am. You said you had explored
25 access, talked with a neighbor. You're talking about**

1 the folks, the Mizzells' property to the west of your
2 property? Is that the one you talked to?

3 A. I've talked to several, but, you know.

4 Q. So access was feasible, physically feasible?

5 A. No. No, sir.

6 Q. Why not?

7 A. I don't know. You would have to ask them,
8 sir. I don't know.

9 Q. Well, I meant -- when I said physically
10 feasible, I'm thinking about the geography, the
11 topography of the properties, and was just wondering if
12 there was any kind of topographical interference with
13 access from the Burden property to the south or the
14 Mizzell property to the west.

15 A. That has nothing to do with my grandfather's
16 property. And what we were talking about is that all
17 of that had been deeded out except for the remaining of
18 the Thomas Jackson estate that my father acquired by
19 petitioning the probate court, so it was the two acres
20 more or less. That's why it's outstanding there, you
21 know?

22 Q. There was -- it was 1985 or shortly after
23 Uncle Rubin died that you started talking to Russell
24 and them about access? Is that what you said?

25 A. (Witness nodded head.) Well, they're not

1 like we're spending money that we shouldn't be, and we
2 shouldn't be here again. I don't, you know...

3 Q. But --

4 A. If I get Berkeley Electric, you know, they
5 could get on it, whatever. Go ahead. I'm listening.

6 Q. So to summarize, I understand that you've
7 been trying to get access --

8 A. Forever and a day.

9 Q. -- from Russell and them since 1985.

10 A. Since 1985 when -- yes, and --

11 Q. That's when you started actually talking to
12 them about, "I want access," and they refused.

13 A. Right. I approached Miss Dangerfield, also,
14 about buying that property in front, and that was after
15 my dad passed away. But I was only 18 years old at the
16 time. I had just turned 18 in January.

17 Q. Miss Dangerfield, is that --

18 A. That was the Mizzell property that's up
19 front.

20 Q. Oh. On the west here?

21 A. Yeah. And then later on --

22 Q. To the west?

23 A. Yes, sir, and then -- Yeah.

24 Q. Okay.

25 A. And she said, "No. Your daddy owns that

1 around much. Okay? They hadn't been around too much.
2 Okay? So when -- when Midge was there for the funeral,
3 I did ask her, you know, and talk to her then, but, you
4 know, the response was the response. Okay? And so --
5 and I would like to apologize to the Court because this
6 is just like -- I apologize if I'm coming across
7 somewhat, but it's just -- I don't think we need to be
8 here today.

9 Q. I see.

10 A. You know? And I apologize. I apologize to
11 you. Okay?

12 Q. Let me take that away from you.

13 A. But, I mean, it's always been a fight, and
14 so --

15 Q. Always been a fight.

16 A. Yeah. It's just like, you know, you-all
17 have just, I mean, spending money for nothing, and it's
18 just...

19 Q. You've been fighting over access to your
20 property for --

21 A. I would have give them access.

22 Q. -- over 20 years.

23 A. I would have give them access. Absolutely.
24 I would have give you an acre, you an acre, whatever.
25 I mean, I'm just not that way, you know. I just feel

1 property over there across the ditch." But that's
2 hearsay. I'm sorry.

3 Q. So after some conversation with the westerly
4 owners, you understood that your father owned that
5 property to the north. Is that what you said?

6 A. Rephrase. I mean, can you repeat that,
7 please?

8 Q. You understood from a neighbor that your
9 father owned the property to the north.

10 A. Which north are you talking about?

11 Q. Well, just across the line, just north of
12 the line.

13 A. Just across the ditch, is that what you're
14 speaking of?

15 Q. Yeah, across the ditch.

16 A. Yes, and also because of the deeds and the
17 reference of the deeds and stuff, yes.

18 Q. But the deeds only gave you two acres.

19 A. More or less. Okay? More or less. And if
20 you go back to their will, my uncle Rubin's will, and
21 through the probate court, two acres.

22 Q. But Rubin could have been mistaken in his
23 will. He might have owned three or four, but he only
24 said two.

25 A. My grandfather gave him three. He sold one

1 to Holroyd Mullinax, so that left two. And so my uncle
2 Rubin has sense enough to put that in his will, you
3 know, and through the probate court, it is stated two
4 acres, and through the will, which they had to present
5 it to the probate court, how it was to be divided. One
6 acre where the house is goes to Russell, it's to go
7 from the public highway all the way to meet Holroyd
8 Mullinax. One acre from the public highway all the way
9 down the strip to me.

10 **Q. You're quoting from Rubin's will?**

11 A. Yes. Yes, sir. I'm sorry.

12 **Q. Part of Exhibit 7C includes Rubin's will.**
13 **What does it say in there about the two acres?**

14 A. It states in here, okay, (Reading) My home
15 place comprised of two acres with the dwelling thereon
16 situated on the east side of Highway 17A, south of
17 Moncks Corner in Berkeley County, South Carolina, do I
18 will and devise to my beloved wife, Lurline Jackson,
19 for and during the full term of her natural life, and
20 from and after the death of my said wife or upon my
21 demise, should she predecease me, okay, then do I will
22 and devise the remaining -- the remainder interest
23 therein to my children, Mildred J. Hudson and Henry
24 Russell Jackson, in the following shares or
25 proportions, that is to say the northernmost portion or

1 acreage -- You got three acres there. He only left
2 them two. So this is not correct. He only left them
3 two. If you add 1.56 and 1.55, it is actually three
4 acres or so.

5 **Q. Well, it's quite possible that he was --**

6 A. Now, the Mullinax property that's back
7 behind them, yes, these two properties are butting and
8 bounding, which would have been the Mullinax property,
9 which is the Bennett property now. Okay? But the
10 acreage is completely wrong.

11 **Q. So you just have a problem with the acreage.**
12 **You're saying you're -- you're a stickler for the**
13 **acreage.**

14 A. A stickler for the acreage? No, sir,
15 because I said I will take whatever is left over as
16 long as I can get to my property. I wanted to make
17 sure my aunt had what she was supposed to get.

18 **Q. Which aunt was that?**

19 A. Lurline.

20 **Q. Oh, okay.**

21 A. Aunt Lurline. She was like a mother to us
22 and whatever, so...

23 **Q. Are you familiar with all these legal**
24 **descriptions and all these old 1930's deeds?**

25 A. Somewhat, yes, sir.

1 one half with the residence thereon shall pass to and
2 vest in my son, Henry Russell Jackson, and the
3 southernmost -- I'm sorry. Let's see -- portion or one
4 half thereof shall pass to and vest in my daughter,
5 Mildred J. Hudson. The property shall be so divided as
6 to allot each an equal frontage along the highway, and
7 the division line shall extend eastwardly from the
8 highway and parallel to the north line to a point along
9 the eastern boundary of the two acres adjoining
10 Mullinax.

11 **Q. Okay. Thank you. Look at Exhibit 7D.**

12 A. So he stated -- Yes, sir.

13 **Q. 7D is the -- is that very subdivision plat,**
14 **isn't it?**

15 A. Okay. Sir, can you repeat that for me?

16 **Q. 7D, that's a plat. That's the very**
17 **subdivision plat that was prescribed by Rubin's will;**
18 **correct?**

19 A. No, sir.

20 **Q. It's not?**

21 A. No, sir.

22 **Q. You see two pieces of property subdivided**
23 **more or less equally with an equal -- more or less**
24 **equal frontage going all the way back to Mullinax?**

25 A. The acreage is quite different. The

1 **Q. For instance, Exhibit 7B, this is the deed**
2 **from Uncle Rubin to Holroyd Mullinax.**

3 A. Yes, sir.

4 **Q. Rubin gives Mullinax property that's bounded**
5 **on the west by Rubin; correct?**

6 A. I'm not sure. I can't hardly read this.
7 These magnifiers are...

8 MR. INGLESE: Your Honor, if I may object.
9 The documents are a matter of public record. They
10 speak for themselves. I think it may be repetitive and
11 cumulative to have this witness testify as to what
12 these public documents say. She's here to testify
13 about the facts of the case and what her recollection
14 is of the history, but I think it's totally unnecessary
15 and repetitive to have her read or recite the will and
16 the deed and just go on and on.

17 MR. WATTS: Mr. Inglese is right. I
18 withdraw that question. Sorry to bother you. Let me
19 have that back. Forget about that question.

20 THE WITNESS: Yes, sir.

21 BY MR. WATTS:

22 **Q. Take a look at Exhibit 11.**

23 A. I have it right here, sir.

24 **Q. All right. Great. Look at the plat that's**
25 **attached to that Exhibit 11. This is the plat you**

1 commissioned and had recorded?

2 A. Yes, sir.

3 Q. And you see that eastern line there for the
4 Mullinax property?

5 A. Yes, sir.

6 Q. So if -- and this, what you characterize as
7 Lot 2, is the area you claimed belonged to your
8 grandfather?

9 A. It's part of the -- it is part of the 02016.

10 Q. Right. What you listed there, what you
11 identified on this plat as Lot 2, is the area that you
12 claimed in your 2006 suit to be part of the Thomas
13 Jackson residual.

14 A. Lot 2, yes, sir.

15 Q. So if Rubin Jackson conveyed property to
16 Holroyd Mullinax and described the western line as all
17 of Rubin's, should he have instead said part of Rubin
18 and part of Thomas Jackson's?

19 MR. INGLESE: Objection. He's asking the
20 witness to speculate about a deceased, you know, a
21 deceased person's intention regarding the conveyance of
22 the property. I think it's way too speculative for
23 this witness to testify to that.

24 THE COURT: What's the question again?

1 A. Of developing in the property there, you're
2 going to need, but we decided not to do it that
3 50-foot.

4 Q. Yeah. You've referred to yourself as "we" a
5 couple of times. Are there other people involved?

6 A. If you consider my husband and my kids
7 sometimes.

8 Q. Okay.

9 A. I'll let them be involved some, but...

10 Q. So according to that -- to your plat in
11 2006, you were contemplating an easement, and then,
12 according to your testimony, you'd been talking with
13 Mildred and Russell and them about an easement, but in
14 your 2006 lawsuit, you just talked in terms of trying
15 to acquire title to the property.

16 A. No, sir. I also talked about access.

17 Q. In your complaint for that, you just asked
18 for ownership, but you didn't ask for, say, "In the
19 alternative, if I don't get ownership, I want access."
20 You didn't do that.

21 A. (Witness shook head.)

22 MR. WATTS: I'll take that exhibit from you.
23 Thank you.

24 No more questions at this time.

25 THE COURT: Any redirect?

1 MR. WATTS: I was suggesting to Miss Mills
2 that, according to this plat, if this plat were real or
3 true, that Rubin's deed to Mullinax would have included
4 a reference to the western line being part on his and
5 part on Thomas Jackson's.

6 THE WITNESS: How is that?

7 THE COURT: Yeah, it does get into
8 speculation. I'll sustain the objection.

9 MR. WATTS: Okay. Never mind.

10 BY MR. WATTS:

11 Q. This plat that you had commissioned in 2005,
12 there's a little note down there that says, Revised on
13 November 21, 2006, to show 50-foot ingress/egress
14 easement. What is that?

15 A. When the plat was done, I think we
16 originally done it for a 25-foot easement, but then it
17 was changed to a 50-foot easement.

18 Q. Where was that -- where was that 50-foot
19 easement originally located on this plat?

20 A. It was located where Lot 2 is coming from
21 17A, ingress/egress from 17A.

22 Q. Okay.

23 A. And the reason being -- Never mind. I was
24 just going to say because in case --

25 Q. In case what?

1 MR. INGLESE: Briefly, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. INGLESE:

4 Q. Miss Mills, I'm going to show you this
5 document. This is -- Do you recognize this? This is
6 your complaint from back in 2006. Does it look
7 familiar to you?

8 A. Yes, sir.

9 Q. And just to follow up on Mr. Watts's
10 question, in that complaint, you're asking for quiet
11 title action; right?

12 A. (Witness nodded head.)

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. And in that complaint, is there a cause of
16 action for an easement or access in that complaint?

17 A. Yes, sir.

18 Q. Take a close look at it, and take your time
19 looking at it, and then answer the question of whether
20 or not there's a cause of action for an easement in
21 there.

22 Is that your complaint that you filed in
23 2006 Miss Mills?

24 A. Yes, it is.

25 Q. And, in fact, there is no cause of action

for an easement in that complaint, is there?

A. No, sir.

Q. No, there is not, that is correct.

MR. INGLESE: At this time, your Honor, we'd ask you to take judicial notice or admit this as Plaintiff's Exhibit 14, unless there's objection from opposing counsel.

THE COURT: Any objection?

MR. WATTS: No objection, your Honor.

(Plaintiff's Exhibit 14 marked and admitted into evidence.)

BY MR. INGLESE:

Q. Earlier, on cross-examination, Mr. Watts presented you with a part of Exhibit 7C, which is the will from Mr. Rubin Jackson out to -- do remember who this will -- He had you read a section here from item number 3.

A. Right. Yes, sir.

Q. And you eloquently presented toward the end of that, the last sentence, and I want to point out or I'd like you to point out to the Court that last sentence, if you would, just quickly read it again and with an emphasis or showing the Court the direction calls in that sentence.

A. In the last sentence?

017 --

A. Yes.

Q. -- and 113. Is there a reference to a southern property line in Rubin's will?

A. No, there's not.

Q. Okay. Thank you.

After 1985, after your uncle passed away, you approached the defendants about accessing your property 016, and the response from your cousins was what?

A. It will be a cold day in hell before I get back there.

Q. Did you really need their access or were you the owner, or did you at least think you owned enough property to get back there?

A. I thought I was the owner, but I like to do things right. Right's right and wrong's wrong. I was taught to do things right. Right's right, wrong's wrong. Okay? And that I owned the property, and since they were there, okay, then say, hey, you know, I mean it's best to go to them and say, "Hey, I'm putting a road in, I want to put a road in; I want to access the property; I want to do something back there." Okay?

Q. Did you ever show them where you wanted to put a road?

Q. The last sentence of item 3.

A. Okay. (Reading) The property shall be so divided, okay, as to allot each an equal frontage along the highway, and the division line shall extend eastwardly from the highway and parallel to the north line to a point along the eastern boundary of the two acres adjoining Mullinax.

Q. So the will of Rubin Jackson references the northern line along 017; correct?

A. Or 018, yes, uh-huh.

Q. Yes. The northern line between 017 and 018.

A. Right, uh-huh.

Q. And it references an eastern point eastwardly.

A. Eastwardly.

Q. Eastwardly, correct. And is there a reference to a southern property line?

A. Eastwardly from the highway, okay, and parallel to the north line to a point along the eastern boundary of the two acres.

Q. Adjoining Mullinax.

A. Adjoining Mullinax.

Q. So that would be this easterly line here --

A. Right.

Q. -- separating what's currently 022 from

A. Oh, I told them that I owned along the ditch line, okay, along the ditch, coming from the public highway down.

Q. And this dashed line you put here earlier...

A. All the way down, yes.

Q. That's the area that you had proposed an access route.

A. Proposed. I owned it, so...

Q. And that was consistent with your position that you owned it.

A. Right, because it was -- Right.

Q. And you testified earlier that you understood from your neighbor and the deed that your father owned that area.

A. Yes.

Q. And what about your uncle? Did your uncle ever indicate that your father owned that area?

A. Yes. He said that, yes.

Q. This is Exhibit 11 again. And on the plat that was presented to the county and the GIS office as well as to this Court back in 2008, you identified Lot 3 or -- excuse me -- you identified Lot 2 on this plat as a portion of your property, as a portion of 016.

A. Right, yes.

Q. And that was based on your understanding

Page 142

1 from your uncle?
 2 A. Uncle, deeds, titles.
 3 Q. Your father, wills?
 4 A. Everybody signing it over, my uncle signing
 5 the paper along with my aunts and uncles and the heirs'
 6 property, you know. That's it.
 7 MR. INGLESE: Nothing further.
 8 THE COURT: All right. Any follow-up,
 9 Mr. Watts?
 10 MR. WATTS: No, your Honor. Thank you.
 11 THE COURT: All right. Ma'am, you can step
 12 down.
 13 Any other witnesses?
 14 MR. INGLESE: None, your Honor.
 15 THE COURT: That's the plaintiff's case?
 16 MR. INGLESE: Yes, your Honor.
 17 THE COURT: Mr. Watts, are you ready to go
 18 forward with yours?
 19 MR. WATTS: Maybe have a brief comfort break
 20 for about five, ten minutes?
 21 THE COURT: All right. We'll come back
 22 about ten till. How about that?
 23 MR. WATTS: Thank you.
 24 MR. INGLESE: Your Honor, if I may, if
 25 Mr. Feeley can be excused. I don't know if you want to

Page 143

1 keep him around or if Mr. Watts wants to keep him
 2 around. I don't foresee a need for it, but if we do,
 3 we have tomorrow.
 4 THE COURT: Anybody going to call him back
 5 today?
 6 MR. WATTS: I don't have any plans to.
 7 THE COURT: No problem then.
 8 MR. INGLESE: We'd just reserve the
 9 opportunity for everyone if we need to have him back
 10 tomorrow.
 11 THE COURT: If it appears appropriate to
 12 recall him, we'll get him back, but for now, we'll let
 13 him go.
 14 Thank you, Mr. Feeley.
 15 All right. Be back in about seven or eight
 16 minutes. How about that? Thank you.
 17 (Recess taken.)
 18 THE COURT: Mr. Watts, all ready to go?
 19 MR. WATTS: Yes, your Honor. And first up
 20 as a witness is Mr. Henry Russell Jackson.
 21 THE COURT: Mr. Jackson, come on up. Put
 22 your left hand on the Bible and raise your right hand.
 23 (Witness sworn.)
 24 THE COURT: Tell the court reporter your
 25 name and spell it for her, too. Okay?

Page 144

1 THE WITNESS: Henry Russell Jackson,
 2 J-a-c-k-s-o-n.
 3 THE COURT: Thank you, sir.
 4 Mr. Watts.
 5 HENRY RUSSELL JACKSON
 6 being first duly sworn, testified as follows:
 7 DIRECT EXAMINATION
 8 BY MR. WATTS:
 9 Q. Mr. Jackson, how are you related to the
 10 plaintiff, Cynthia Jacqueline Jackson Mills?
 11 A. Cousin.
 12 Q. And how are you related to Mildred Jackson?
 13 A. My sister.
 14 Q. And Janet Hudson?
 15 A. My cousin. Niece.
 16 Q. Niece?
 17 A. Niece.
 18 Q. Okay. Are you -- Let me show you Exhibit
 19 7D. Are you familiar with that plat?
 20 A. Yes, sir.
 21 Q. How are you familiar with the plat?
 22 A. Once we got the land or was supposed to get
 23 the land, I got a surveyor to come out and survey the
 24 land and check all of the points to make sure that the
 25 land was equally divided.

Page 145

1 Q. When did you commission this plat?
 2 A. It was in 2011, I believe, or 2012.
 3 Q. I see a date on there that's April 27, 2011.
 4 A. 2011, yeah.
 5 Q. And let's see. We've had testimony about
 6 Lurline. Who is that?
 7 A. That was my mother.
 8 Q. Okay. She died?
 9 A. Yes, sir. She died in 2011.
 10 Q. I see. How did -- how did your mother come
 11 by this property?
 12 A. It was willed from her husband, Rubin.
 13 Q. And how do you understand that Rubin came by
 14 this property?
 15 A. It was given to him by his father, Thomas
 16 Jackson.
 17 Q. There's been a lot of testimony about a deed
 18 from Thomas to Rubin back in 1935. Is that the
 19 conveyance you're talking about?
 20 A. Yes, sir.
 21 Q. Okay. And what did Rubin and Lurline do
 22 with this property?
 23 A. They planted a vegetable garden back there,
 24 and they planted corn, raised some pigs back there.
 25 Q. When did -- when do you recollect -- what is

your earliest recollection of them doing that?

A. In probably about 1954 or 1955.

Q. Okay. Let's see. When were you born?

A. '40.

Q. 1940. I see a wooden house on Tract A.

A. Yes, sir.

Q. What is that?

A. That is the original home place that my father built.

Q. Did you live there at any point in time?

A. Yes, sir, from the time I was probably three years old until probably 21.

Q. Did your sister, Mildred, live there, too?

A. Yes, sir.

Q. This cultivation you're talking about, how long did that last?

A. Due to health of my parents, they probably quit planting their garden back there in the '70s, maybe '75.

Q. But prior to that, you said they grew corn?

A. Yes, sir.

Q. How much area -- how much area of this property was under cultivation?

A. Probably about -- about three quarters of an acre. Everything was fenced and cross-fenced back

there.

Q. I'm sorry. Fenced?

A. I said everything was fenced and cross-fenced.

Q. Okay. Now, how about the extent -- You said three quarters of an acre. Can you kind of give me an idea of the location of that area that was cultivated?

A. Yes. I would say right to maybe 40 feet from behind the wooden house to maybe 75 feet from the end of the property or 100 feet, because it was lower area in the back.

Q. Oh, really?

A. Yes, sir. My dad and my uncle raised pigs back there.

Q. In the low area?

A. Yes, sir.

Q. How far across -- That gives us the depth. How far across was the cultivation?

A. Just about all the way across.

Q. Where exactly is that low area you just mentioned?

A. Low area would be in between Tract A and B and all -- actually, all of B. It starts in probably halfway of A, all of B, and goes up into Cynthia's property.

Q. I see. And how far up toward the highway did that extend?

A. In the A tract, maybe 50 feet; Tract B, probably 75 to 100 feet.

Q. And can you describe in a little more detail what you mean by low area?

A. It was a drainage area for a culvert and Highway 17A going through the ditch on the property line back to the low area, which it consisted of nothing but gum trees back there in the low area, and that lower area was probably the better part of an acre, three quarters of an acre to an acre.

Q. You said a ditch. Where was the ditch located?

A. The ditch would be between Tract B and Mills' and Mizzell's property.

Q. And you said it went from the highway all the way back to the low area?

A. Yes, sir. Yes, sir. The closest it got to the -- I call it the pond area, the shallower it got.

Q. How long has that ditch been there?

A. Before my time, sir. I'm 74.

Q. Any other physical characteristics about the property you recall?

A. No, sir, not really.

Q. You said something earlier about fencing and cross-fencing.

A. Yes, sir. You had to have the area fenced in to keep the hogs in. There was a fence right behind our house, another one about middle ways of the property, another fence at the very property line between Jackson and Mullinax. There was a fence between Jackson and Jackson. There was a fence between Jackson and Mills and Mizzell. So there was -- it was fenced off so he could put the hogs or he could plant corn or whatever back in the -- in the fields. That's the only thing that the fields were used for is to plant corn or hogs.

Q. What kind of fence?

A. It's called hog wire. It's, I think, 54 inches high, so the hogs can't get through the fence, small mesh at the bottom. The higher up it get, the larger the mesh of the wire is.

Q. I see. Is it a light gauge metal or a heavy gauge metal?

A. Well, it's a galvanized steel wire, and you need a pair of -- I call them lineman pliers or dikes to cut the wire. You can't just bend it back and forth and break it.

Q. Are the pieces of the wire -- how are they

Page 150

1 fastened to each other?

2 MR. INGLESE: Objection, your Honor. It's

3 irrelevant. And I'm just looking at the answer and

4 counterclaim trying to put the pieces of relevancy

5 together from the questioning about the fence, and I

6 object.

7 MR. WATTS: I'll withdraw that.

8 THE COURT: Okay. Thank you.

9 BY MR. WATTS:

10 Q. How about the extent of that fencing, the

11 hog wire fencing? You said it extended all along Tract

12 B, the southern boundary of Tract B?

13 A. Yes, sir.

14 Q. Any other fencing you ever noticed in there?

15 A. Yes, sir. To the right of the ditch, which

16 is Cynthia's property, that was completely fenced in

17 also.

18 Q. What kind of fencing was that?

19 A. Hog wire.

20 Q. This plat shows a mobile home in Tract B.

21 Is that still in place there?

22 A. Yes, sir.

23 Q. Whose is that or who occupies that?

24 A. Janet, my sister's daughter.

25 Q. Anything else along -- any other structures

Page 151

1 that you can see on Tract B?

2 A. No, sir. They've got a -- I think it's a

3 double car carport out front.

4 Q. Ever been a road back there from the highway

5 back to Miss Mills's property?

6 A. No, sir. The furthest any road has ever

7 been is -- I used to live in a mobile home almost where

8 this mobile home is on Plat B, and I had a circular

9 driveway in front of the mobile home from Highway 17.

10 That is all -- all the road that's ever been in there.

11 Q. Miss Mills testified that, "We went in there

12 a lot." Did you ever see Miss Mills on that property?

13 A. If she did, she did by foot. No vehicle

14 could get back there.

15 Q. Ever see anybody else, any other family

16 members using that property?

17 A. No, sir.

18 Q. Anybody ever come to you and say, "I own a

19 piece of this property"?

20 A. No, sir.

21 Q. Or anyone ever come to you and say, "I'm

22 entitled to access along this piece of property"?

23 A. Cynthia made mention to it, but it didn't

24 become my property until 2011, so I couldn't tell her

25 yes or no.

Page 152

1 Q. And that's because...

2 A. My mother owned it.

3 Q. Okay. She had the life estate.

4 A. That's right.

5 Q. Do you recall anybody approaching your

6 mother and making a claim for title to the property or

7 access across the property?

8 A. I'm sure -- well --

9 MR. INGLESE: Objection. I think that's

10 double hearsay, asking the witness to testify not just

11 about what his mother heard, but what somebody may have

12 told his mother. I think that's double hearsay, and I

13 object.

14 MR. WATTS: Well, I can understand, but, you

15 know, I'm not asking for any comments from somebody

16 that's from somebody else, just if he was aware of

17 anybody approaching your mother and, you know -- Did

18 you see anybody, for instance?

19 THE COURT: I'll allow that question.

20 A. My mother did say that Cynthia had

21 approached her about access back there.

22 BY MR. WATTS:

23 Q. Do you recollect anybody approaching your

24 father, Rubin, about --

25 A. No, sir.

Page 153

1 Q. There's been a lot of testimony and such

2 about Miss Mills's lawsuit in 2006. Are you familiar

3 with that?

4 A. Yes, sir.

5 Q. How are you familiar with that?

6 A. I was power of attorney for my mother back

7 then.

8 Q. You were actually named as a party; is that

9 correct?

10 A. No, sir, not in that case.

11 Q. Did you participate at all in that lawsuit?

12 A. Yes, sir.

13 Q. How?

14 A. I was called as a witness.

15 Q. What are some of the topics that you

16 testified to? What sort of topics did you testify

17 about?

18 A. Cynthia wanted access to her property, and I

19 didn't see really how that she could make my mother

20 give her access.

21 Q. Anything else? Did you testify about

22 anything else?

23 A. I'm sure I did, but I can't recall it right

24 now.

25 Q. Okay. Going back to the plat, your plat,

1 and the uses of the property, do you remember any other
2 structures out there, especially in Tract B? Do you
3 recall any other structures in the Tract B area?

4 A. Years ago I had an old outbuilding there, a
5 storage building. That was it.

6 Q. Any other structures that you've ever seen
7 out there?

8 A. At one time Janet and them had a second
9 mobile home out there, but they tore it down and
10 disposed of it, and that was it. They had a swimming
11 pool, but I think that's gone now.

12 Q. Were there any periods of time when nobody
13 lived out there on that property at all?

14 A. Yes, sir. I moved from up there in probably
15 '66 or '67 to Charleston, and it was probably 15 years
16 that nobody lived on Tract B.

17 Q. Okay. But your mother lived up there.

18 A. Oh, yes, yes.

19 Q. The activity, the cultivation, the corn and
20 the hogs and the fencing, would that have been visible
21 from Highway 17A?

22 A. Probably. You'd have to look hard because
23 it's probably 300 to 350 feet from the highway back to
24 where the hogs were.

25 Q. Okay. Would it have been visible from the

1 A. That I don't know. I doubt it.

2 Q. Did you bring the power of attorney with you
3 today?

4 A. No, sir. She's deceased.

5 Q. With regard to the cultivation of the
6 vegetables and the pigs, did you bring any pictures?
7 Were there any pictures?

8 A. No.

9 Q. And the fencing, are there any pictures of
10 the fencing?

11 A. 99 percent of all the fence is gone. The
12 only remnants of fence out there now, there's a few
13 posts.

14 Q. Are you aware of any permits that were
15 pulled for the fencing?

16 A. You don't pull permits for hog fence.
17 Agricultural.

18 Q. Are you a farmer?

19 A. Not me.

20 Q. Are you a permit officer?

21 A. No, sir.

22 Q. You stated that the ditch had been there
23 before your time, and that you're 74 years old, so I'm
24 wondering how far back does your memory serve you?
25 A. Well, I can remember some things back to

1 adjacent property?

2 A. Oh, yes, sir.

3 Q. I'm sorry. About when did your father
4 discontinue the corn and the hogs?

5 A. In the mid '70s, maybe even earlier than
6 that.

7 Q. Did you or your family, your parents, share
8 this property with anybody else?

9 A. Cynthia's father and my father raised pigs,
10 hogs out there.

11 MR. WATTS: Okay. Thank you.

12 THE WITNESS: Yes, sir.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. INGLESE:

16 Q. Mr. Russell, you stated that -- in your
17 testimony, you said that, "Once we got the land," end
18 quote, you got it surveyed in 2011.

19 A. Right.

20 Q. And so prior to that, the land wasn't yours.

21 A. That's right.

22 Q. And when did you get the power of attorney
23 over your mom?

24 A. In, I think it was, 2005.

25 Q. And did that include power over real estate?

1 when I was four or five years old.

2 Q. With regard to this property?

3 A. No, sir.

4 Q. Okay. How far back does your memory serve
5 you with regard to this property?

6 A. In probably the early '50s. I farmed most
7 of it for Cynthia's daddy. I farmed 42 acres of rental
8 property for him.

9 Q. And you mentioned the circular driveway.
10 Can you show us the circular driveway?

11 A. Right here (indicating).

12 Q. If you would, use the board so the Court can
13 see what you're doing.

14 A. Would have been right all in here, Highway
15 17. I had a mobile home right about where Janet
16 Hudson's is now.

17 Q. And you see this circular, crescent-looking
18 tract, it looks like maybe tire tracks coming around?

19 A. Yeah.

20 Q. Is that part of that?

21 A. No, no, no, no, no.

22 Q. And do you see these tracks here that
23 extend --

24 A. Yes.

25 Q. -- easterly --

Page 158

1 A. Yeah.

2 Q. -- from the driveway that you just pointed

3 out?

4 A. Yeah.

5 Q. So a vehicle could access the center of

6 these two parcels, 017 and 018?

7 A. Part of the way.

8 Q. And then it got low down here, so it was

9 real wet?

10 A. Yeah.

11 Q. Vehicles shouldn't be back here, obviously.

12 A. Exactly.

13 Q. But it looks like there's some wear and tear

14 from vehicles.

15 A. I take and drive back there whenever I have

16 to ride up or load a lawnmower.

17 Q. Thank you.

18 You said my client, Miss Mills, had

19 approached your mother, that you were aware of her --

20 A. My mother told me about it.

21 Q. And what did she tell you?

22 A. She told me Cynthia wanted permission to

23 access her property back in the back.

24 Q. And what was your mother's feeling about

25 that?

Page 159

1 A. She didn't know what to do.

2 Q. And you were her power of attorney and her

3 son?

4 A. Not then I wasn't.

5 Q. But her son.

6 A. Right.

7 Q. Did she confide in you?

8 A. Yes.

9 Q. And what was your advice to her?

10 A. I told her I wouldn't, I wouldn't give her

11 permission.

12 Q. You testified that you never saw my client

13 on the property, but you don't actually live on this

14 property, do you?

15 A. No.

16 Q. And how much time have you spent on the

17 property over the last 60 years? Did you ever live on

18 the property?

19 A. Well, from 1940 until '67, I lived there.

20 Q. So from '40 to '67 you lived there?

21 A. Yes.

22 Q. And how about --

23 A. Then I moved to Charleston. I would go up

24 about every two weeks to check on Mom and Dad.

25 Q. And since 1985, how often have you been up

Page 160

1 there?

2 A. Every couple of weeks.

3 Q. So it's possible that other family members

4 and/or my client could have been visiting the property

5 and you might not have known it?

6 A. Oh, yeah.

7 Q. And you said that there was a period of

8 time, I didn't catch the years, but about a 15-year

9 period where nobody was on Tract B?

10 A. That's right.

11 Q. What were those years?

12 A. Like I say, '66, '67, until the mid '80s.

13 Q. So no one was living there, and there were

14 no pigs because that ended in '75.

15 A. Pigs ended before then and the garden.

16 Q. And the vegetables were no longer...

17 A. It ended also.

18 Q. Pretty much no activity happening --

19 A. Right.

20 Q. -- that you were aware of.

21 A. There was no activity.

22 Q. And you said that you're aware of Cynthia's

23 father and your father sharing the property?

24 A. Raising pigs. I didn't say sharing the

25 property.

Page 161

1 Q. So they shared pigs or --

2 A. My dad got a percentage. Now, what, I don't

3 know.

4 Q. And your father was Rubin Jackson?

5 A. Rubin, yes.

6 Q. And my client's father was --

7 A. John.

8 Q. -- John Jackson. So they were interacting

9 on the property to some degree.

10 A. Yes.

11 Q. And both were benefitting from it.

12 A. Right.

13 Q. But you don't have a contract or know the

14 nature of --

15 A. No.

16 Q. -- their agreement?

17 A. Huh-uh.

18 Q. I'm curious why you would advise your mother

19 against allowing Cynthia to have access or at least

20 acknowledging -- either acknowledging her ownership

21 interest in the area along the ditch that would allow

22 her access or cooperating with the family member to

23 acknowledge the ability to access her property.

24 A. At that time, there were a lot more

25 convenient and easier accesses to her property.

Page 162

1 Q. Can you be more specific?
2 A. On Burden Road. Her property goes within
3 less than a hundred feet of Burden Road.
4 Q. Do you understand that property was never a
5 part of your grandfather's estate?
6 A. Oh, I know it's not. She could have offered
7 to buy a right-of-way.
8 Q. Is it your suggestion that it's easier for
9 Miss Mills to go down this established road than it is
10 to go down a proposed access along a ditch?
11 A. Sure.
12 Q. But just visually looking at this, do you
13 agree that the distance from 17A to the corner of
14 Miss Mills' property is shorter than the distance
15 through the Burden tract? If you were to use this and
16 follow the Burden tract and then cut across, you've got
17 to go all along this distance to get there, whereas
18 here you have a direct shot, which is a shorter
19 distance. Do you agree with that?
20 A. What is it? A hundred foot difference?
21 Q. I don't know. But is it shorter or not?
22 A. Sure, it's shorter.
23 Q. And this --
24 A. It's a lot more work to get from Highway 17
25 through Momma's property to Cynthia's. You've already

Page 164

1 the septic tank. It covers just about the whole width
2 of the property up there.
3 Q. Do you think your father would have minded
4 Cynthia having access through 113?
5 A. Well, if he would have wanted her to have
6 access, I think he would have put it in a will.
7 MR. INGLESE: Nothing further.
8 THE COURT: Anything further?
9 REDIRECT EXAMINATION
10 BY MR. WATTS:
11 Q. You said, "When we got the property," you
12 made this plat. What did you mean by, "When we got the
13 property"?
14 A. Well, until my mother died and we had the
15 will probated, the land was hers. That's when we
16 got -- after she passed away, we got everything taken
17 care of and then divided -- had the land surveyed and
18 divided it.
19 Q. Just your inheritance from your mom?
20 A. Right, yes, sir.
21 Q. Okay. And there was some conversation
22 between you and Mr. Inglese about Miss Mills's
23 approaching your mother about access. Do you know
24 about when that was?
25 A. No, sir, I don't.

Page 163

1 got an access road at Burden Hill.
2 Q. Well, certainly, they would have to pay --
3 my client would have to pay these people.
4 A. That's state maintained road.
5 Q. We would have to pay the owners of this
6 property and the owners of this property to be able to
7 access across here. Do you agree with that?
8 A. No. I don't know. Okay? That's why I'm --
9 Q. Well, the right-of-way here doesn't touch
10 Miss Mills's property.
11 A. I know the right-of-way doesn't. She would
12 have to buy that.
13 Q. And the same money could be used for access
14 up here.
15 A. She's never offered to buy, trade. Well,
16 she did offer to trade one time. She offered to trade
17 her piece of land for my sister's land road frontage
18 across the road.
19 Q. Do you think it's appropriate to burden
20 non-family members when there's a reasonable option
21 within the family estate?
22 A. Probably not.
23 Q. If these folks needed access through your
24 property, would you be willing to give them access?
25 A. I couldn't because of the drain lines from

Page 165

1 Q. And you-all discussed the convenience,
2 relative convenience, between cutting into Miss Mills's
3 property from the south on Burden Hill Road as opposed
4 to running along the southern boundary of Tract B, and
5 I think you said it was going to be -- What did you
6 say? What was your answer about that?
7 A. The distance?
8 Q. Yeah.
9 A. There's only maybe 100, 150 feet. That dirt
10 road runs, you know, real close to her property.
11 Q. Any other convenience factors that might
12 come into play?
13 A. She had possible access from Branch Road
14 through the Clarks'.
15 Q. Compared to access from Burden Hill and the
16 access along the southern boundary of Tract B, what
17 about things like cost or obstructions?
18 A. Right now --
19 Q. For instance, I think you mentioned drain
20 fields.
21 A. Yeah. Janet's trailer is probably within 20
22 or 25 feet from the property line right now. She's
23 got, I think it's 14 by 70 something, mobile home, and
24 it takes up just about the entire width of the lot, and
25 she's got her drain fields behind that, and over Tract

Page 166 1 A, which is mine, I got the septic tank and I got the 2 drain fields running almost to the property line 3 between A and B. 4 Q. Okay. 5 A. So it would be expensive to try and get her, 6 you know, through there, very expensive. 7 MR. WATTS: I see. Thank you. 8 THE COURT: Anything further? 9 RECROSS-EXAMINATION 10 BY MR. INGLESE: 11 Q. How expensive is it to move a trailer? 12 A. How far? 13 Q. Well, in this case, this is 14 feet between 14 the property line and the trailer, and the county 15 requires 30 feet, so we've got to move it 16 feet to be 16 able to get a 30-foot easement in there. How expensive 17 would it be to move a trailer 16 feet? 18 A. I don't have any idea, sir. 19 Q. But you just said it would be more expensive 20 to do that. What are you basing that on? 21 A. You move a trailer, you've got to move your 22 septic field over also. It's not just the trailer. 23 Q. What are you basing that on? 24 A. Because of your drain lines. 25 Q. Are you a contractor?	Page 168 1 MR. WATTS: One more question, your Honor. 2 FURTHER REDIRECT EXAMINATION 3 BY MR. WATTS: 4 Q. Mr. Inglese referred to why burden some 5 stranger when there's a convenient way to work within 6 the family. Do you consider Miss Mills family anymore? 7 A. No, sir. 8 MR. WATTS: Thank you. 9 THE COURT: Mr. Jackson -- 10 MR. INGLESE: I would like to dive into that 11 a little bit more, your Honor. I want to know why he 12 doesn't think she's -- she's not family. 13 MR. WATTS: That's going well beyond the 14 scope of this trial, your Honor. 15 THE COURT: We're getting a little far from 16 the issues to get into the whole family matters. It's 17 not a family court case. So I'll deny that request for 18 that line of questioning. And I'll ask Mr. Jackson to 19 step down. 20 Have you got somebody else? 21 MR. WATTS: Yes, sir. I have Janet Hudson 22 next. 23 THE COURT: All right. Miss Hudson. 24 Miss Hudson, put your left hand on the Bible 25 and raise your right hand.
Page 167 1 A. I used to be a superintendent for a 2 contractor. 3 Q. Are you a contractor now? 4 A. No, sir. 5 Q. Are you a permit officer now? 6 A. No, sir. 7 Q. As far as convenience, Mr. Watts asked you 8 about convenience. Don't you agree -- and I think you 9 testified earlier -- Why would you inconvenience a 10 property that has nothing to do with your grandfather's 11 estate when you have an area that's available for free; 12 if Miss Mills is correct in her testimony about the 13 understanding between family members, you have free 14 access; it's a matter of putting some dirt in there to 15 allow a driveway to access her property? How is 16 that -- Explain to me how what Miss Mills is asking for 17 is somehow more inconvenient than accessing somebody 18 who has nothing to do with the family, when you don't 19 know what the cost of the trailer is, you don't know 20 what the cost of bringing some dirt in. How can you 21 make those assessments from Mr. Watts's question? 22 A. I can't. 23 MR. INGLESE: Okay. Thank you. Nothing 24 further. 25 THE COURT: Mr. Watts?	Page 169 1 (Witness sworn.) 2 THE COURT: Thank you, ma'am. Tell the 3 court reporter your name, and spell your last name for 4 her. 5 THE WITNESS: It's Janet Lynne Hudson, 6 H-u-d-s-o-n. 7 THE COURT: Thank you, ma'am. 8 Mr. Watts. 9 JANET LYNNE HUDSON 10 being first duly sworn, testified as follows: 11 DIRECT EXAMINATION 12 BY MR. WATTS: 13 Q. Miss Hudson, you're a defendant in this 14 case? 15 A. Yes, sir. 16 Q. And how are you related to the plaintiff? 17 A. She's my late grandfather's niece. 18 Q. Now, let me show you Plaintiff's Exhibit 7D. 19 Do you recognize that property or that plat? 20 A. Yes, sir. 21 Q. How do you recognize that? 22 A. My grandmother's house is on Tract A. I'm 23 on Tract B. I have a single-wide trailer there. 24 Q. How do you use that trailer? 25 A. I live in it.

Page 170

Q. Are there any other structures on that property in addition to the trailer?

A. Yes, sir. I have an extra large double carport in front of my house next to the ditch.

Q. And where is the ditch located?

A. It is on -- I'm sorry. I'm bad with left and -- It's on my right-hand side if I'm looking from 17A. It's between me and Mr. Mizzell and Miss Mills.

Q. All right. How far down does that ditch go?

A. Goes all the way through the Mullinax property all the way to Branch Road, and I believe it goes on the other side of Branch Road.

Q. What other physical characteristics do you know about for this property?

A. Well, the ditch starts at the front. It's six-foot deep. As it goes back, it starts filling in with dirt and sediment from up front, so they come out at least once in the last 15 years and cleaned it out. It's mushy from pretty much my back door all the way down to the Mullinax property on my tract. My electric lines go underneath the ground from Jackie Mills' and Russell Jackson's property line across. My phone, my cable, my Internet come from 17A underground across Mr. Jackson's property and my property to the back of the house. Pretty much there's not a whole lot you can

Page 172

season?

A. Just a little bit of rain gives it mushy. You don't -- I can't push the lawnmower back in the backyard or in the field because of the water that retains back there.

Q. How long have you been living out there on that property?

A. The trailer went in in 1998. Prior to the trailer, I had a fifth wheel that I was in out over there from '92 until -- what was it? '94? No. Kara started school in '96, so in '96 the fifth wheel was permanently there until I put the trailer there.

Q. Okay. So that sounds like 1996 to '98 for the fifth wheel?

A. Yeah, '96 to '98, the fifth wheel was there. Between '93 and '96, my grandmother had had different surgeries, and I was there for her surgeries, to take care of her, so I was in and out whenever she had surgeries. I might be there three months. I might be there six months. It just depended on what she needed.

Q. Living with her in the wooden house?

A. No, sir. I would have my fifth wheel out in the yard.

Q. Oh.

A. It would either be on Tract B, where I'm at,

Page 171

do back there except for farm or let it grow up.

Q. Mr. Jackson mentioned drain fields. Do you know anything about sewers?

A. Yes, sir. I have four drain lines from my septic tank. He also has drain lines from the house going out towards my property. I have a gas tank in the backyard, two gas tanks in the backyard for gas for my house. I also have a shed there up on -- close to the ditch. Actually, I would say the building, the little red storage building that's out there, is maybe five or ten feet from the ditch. The gas line runs -- it feeds my house gas so I can cook and I can heat water. That's on the property right there at the ditch line also.

Q. You characterize the backyard as mushy. How mushy is it?

A. It is so mushy that the dog doesn't even want to go out there to go pee when it rains. Okay? It doesn't take much rain. When you walk, if you get in -- start going in the back, it goes over the top of your shoes with the amount of rain we've had here lately.

Q. So let's concede that we've had an extraordinary amount of rain over the last six, seven months. What was it like before all this rain this

Page 173

or it would be on Tract A, next to her house, depending on what the issue was.

Q. Okay. So you would just trailer it in, set it up?

A. Yes, sir.

Q. All right. So that was going on beginning about 1993?

A. Yes, sir. I think my daughter was about two years old when all that started.

Q. During that period of time, did you see any kind of road from the highway back to the back of your property?

A. No, sir.

Q. Mr. Jackson talked about hog wire fencing. Did you see hog wire fencing?

A. I will be -- I don't know the difference between hog wire fencing and any other fence, for that matter, except for chain link, but I remember the hogs when we were little because we spent our summers up there with them, so I do remember the hogs. There is still some barbed wire fence that I know is barbed wire embedded in the trees along the property line that are there.

Q. How far does the barbed wire fence remnants go back?

1 A. I couldn't tell you. I know I've seen bits
2 and pieces from my property in the trees when you walk
3 down, when I was trying to clean up the property line,
4 that you could see from mine.

5 Q. Okay.

6 A. So I couldn't tell you how long. I just
7 know it's been there a long time because it's embedded
8 in the tree where the tree's grown around it.

9 Q. During this time when you've lived out
10 there, has anybody -- did anybody come to you claiming
11 an ownership interest in part of your property?

12 A. No. Jackie just come up and said she was
13 going to put a road in to get to her property, she was
14 taking right-of-way.

15 Q. Do you remember about when that was?

16 A. No, sir. No, sir, I don't remember when
17 that was.

18 Q. You have a little bit of an inflection in
19 your comments about what she said. Is that kind of how
20 she said it, or was she a little easier or harder on
21 you?

22 A. Oh, no, sir. She's always demanding on when
23 she talks to you. She's doing this and this is what's
24 happening is the way she's pretty much treated me
25 since, oh, Lord, '92, '93, because we had issues over

1 remember at this time on that.

2 Q. Okay. And during the time you've lived out
3 there, have you ever seen Miss Mills on the property?

4 A. The time that I have lived there, no, sir.
5 Well, yes, sir, I've seen her on my tract, but that was
6 when they came out to redo the ditch line, the county
7 came out. She was giving them a hard way to go. She
8 had her plat out there yelling at the guys that they
9 couldn't touch her property. And we had them move the
10 ditch over onto our tract a little bit. I think it's
11 six foot over on our side, so, that way, it does not
12 touch her property. But the original ditch is still
13 there. You can see it.

14 Q. About when was that?

15 A. It was before the lawsuit, so it had to have
16 been about 2000.

17 Q. Do you remember anything she actually said
18 to the crew out there?

19 A. No, sir, I couldn't. I was not standing
20 there. I just heard her yelling at them.

21 Q. Now, I understand you actually own this
22 Tract B now.

23 A. Yes, sir.

24 Q. That was by virtue of a deed from Mr. Henry
25 and Miss Mildred?

1 my grandmother, my grandmother's care.

2 Q. Were there any other instances that
3 Miss Mills approached you about an access?

4 A. We've had words since probably 2005 when she
5 was in the driveway on the property. We've had --
6 we've exchanged a lot of verbal words.

7 Q. Okay. Do you know about any instance when
8 Miss Mills approached Miss Lurline about access?

9 A. No, sir.

10 Q. Are you familiar with the 2006 lawsuit that
11 Miss Mills brought?

12 A. Yes, sir.

13 Q. Were you a party to that lawsuit?

14 A. Yes, sir.

15 Q. Did you participate?

16 A. Yes, sir.

17 Q. Did you testify?

18 A. Yes, sir.

19 Q. What were some of the things you talked
20 about when you testified?

21 A. She showed me pictures of my house, my
22 trailer, asked me what that was and who told me I could
23 put it there. She asked me about who told me I could
24 put the mailbox there, who gave me permission to put
25 the septic tank in. Pretty much that's all I can

1 A. Yes, sir.

2 Q. Let me show you Exhibit 7C. This is a stack
3 of several documents. Leaf through there and see if
4 you can find the deed by which you took title. Do you
5 recognize that?

6 A. Yes, sir.

7 MR. WATTS: Okay. I just wanted to identify
8 that for you or for the Court.

9 Okay. Thank you.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. INGLESE:

13 Q. Regarding the deed that Mr. Watts just asked
14 you about, that's a deed to you; correct? You are the
15 grantee, Janet Lynne Hudson?

16 A. Yes, sir.

17 Q. And were you the recipient of property
18 before this time, of this property?

19 A. As far as did somebody give it to me before
20 this date?

21 Q. Right.

22 A. No, sir.

23 Q. You didn't have title to Tract B --

24 A. No, sir.

25 Q. -- prior to this deed.

Page 178

1 A. No, sir.
2 MR. INGLESE: That's all.
3 THE COURT: Anything further?
4 MR. WATTS: No redirect, your Honor.
5 THE COURT: All right. Miss Hudson, you can
6 step down.
7 Is there anyone else you have to testify
8 today, Mr. Watts?
9 MR. WATTS: No, your Honor. Defense rests.
10 THE COURT: All right. I know you-all have
11 got scheduled for tomorrow as well. Do you anticipate,
12 Mr. Inglese, calling anybody or any further testimony
13 or rebuttal testimony?
14 MR. INGLESE: I don't, your Honor. The only
15 thing, if you're not going to rule from the bench
16 today, the only thing I would request is to keep the
17 record open so we can supplement on the attorney's fees
18 issue. I think we've got the testimony we need. We
19 just don't have the statutory or case law to support
20 the request, and those would be self-executing, you
21 know, pieces of evidence.
22 THE COURT: What you're asking for is, if I
23 were to rule in favor of the attorney's fees, then we'd
24 have to revisit the amount by way of an affidavit or
25 additional testimony.

Page 180

1 then you'll save some effort submitting an affidavit.
2 MR. INGLESE: Other than that, I'm prepared
3 to give a closing today.
4 THE COURT: How much time do you-all need to
5 close? Do you-all want to come back and finish up
6 tomorrow, after you've had a chance to think about it?
7 MR. WATTS: I like that idea, your Honor.
8 THE COURT: That's why I prefaced that I
9 know you had scheduled for tomorrow. I'm not sure how
10 you-all's schedules work out. You might prefer to have
11 a little time to get squared away, then you're not
12 going to feel pressed against 5:00 or 5:30. So why
13 don't we reconvene at 9:30, then I'll hear the closings
14 and any other thoughts that you-all have, and at that
15 point in time then, we'll go forward from there. How's
16 that?
17 MR. INGLESE: Very well, your Honor.
18 MR. WATTS: Very good, your Honor.
19 THE COURT: Thank you, gentleman. Thank
20 you, ladies.
21 (The proceedings adjourned at 4:53 p.m.)
22
23
24
25

Page 179

1 MR. INGLESE: We can submit the affidavit --
2 my affidavit of attorney's fees to corroborate
3 Miss Mills's testimony, go ahead and submit that today,
4 and then support any legal basis while the record
5 remains open, if we're able to do that.
6 MR. WATTS: I object. I don't see the
7 point. I don't think there's anything in the record
8 that would indicate he's entitled to attorney's fees or
9 Miss Mills is entitled to attorney's fees. There's
10 been no reference to any statute. There's no contract.
11 THE COURT: I think what I'm inclined to do
12 is not hold it open for the purposes of arguing whether
13 you're entitled to it or not, but if I were to rule
14 that you were entitled to it, then I would open that
15 door for purposes of the attorney's fees affidavit.
16 MR. INGLESE: Should we submit it at this
17 time, just to keep --
18 THE COURT: There's no need right now.
19 MR. INGLESE: No need now? Okay. Thank
20 you, your Honor.
21 THE COURT: If I were to rule in that
22 direction and say, Yes, I'm going to award attorney's
23 fees, then I'll invite you to file an affidavit and
24 allow for response. If I say, No, there is not any
25 right to recover for the attorney's fees, hopefully

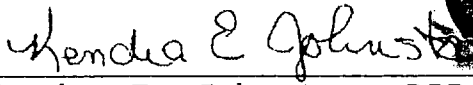
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing proceedings, and that the transcript is a true record of such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 15th day of May, 2015, in the City of Charleston, County of Charleston, State of South Carolina.


Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) THE NINTH JUDICIAL CIRCUIT

CYNTHIA JACQUELINE JACKSON)
MILLS,)

Plaintiff,)

v.)

) Case No. 2012-CP-08-3013

JANET LYNNE HUDSON, HENRY)
RUSSELL JACKSON, and MILDRED)
JACKSON HUDSON,)

Defendants.)

PROCEEDINGS BEFORE THE HONORABLE DALE VAN SLAMBROOK

VOLUME II

DATE TAKEN: Tuesday, March 31, 2015

TIME: 9:33 a.m.

PLACE: Berkeley County Courthouse
300-B California Avenue
Moncks Corner, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

Page 183 1 A P P E A R A N C E S 2 REPRESENTING THE PLAINTIFF: 3 CHRISTOPHER INGLESE, ESQUIRE 4 MARY LEE HUTSON, ESQUIRE 5 1011 Bay Street, Suite 305 6 Beaufort, South Carolina 29902 7 chris@ingleseandassociates.com 8 REPRESENTING THE DEFENDANTS: 9 PATRICK R. WATTS, ESQUIRE 10 Watts Law Firm, P.A. 11 133 East 1st North Street, Suite 6 12 Summerville, South Carolina 29483 13 pat.watts@wattslawfirm.com	Page 185 1 (The proceedings commenced at 9:33 a.m.) 2 THE COURT: We're back on the record in the 3 matter of Cynthia Jacqueline Jackson Mills, Plaintiff, 4 vs. Janet Lynne Hudson, Henry Russell Jackson and 5 Mildred Jackson Hudson, case number 2012-CP-08-3013, 6 March 31st, 2015. 7 You concluded the trial yesterday, and I 8 understand that there was no rebuttal, further 9 rebuttal, or anything else from the plaintiff. Is that 10 correct? 11 MR. INGLESE: Your Honor, the only thing, 12 and I brought this up at the end of yesterday, was the 13 attorney's fees issue. And the theory that we've come 14 up with is that there is an implied contract in law 15 amongst the ancestors, my client's father and 16 defendants' father. And you heard testimony from the 17 defendants about the cooperative nature of the two 18 brothers raising the hogs, planting the vegetables, 19 driving through Tract B to get back there, and that, I 20 think, the Court can infer some contractual 21 relationship there, and that that contractual 22 relationship included a requirement for cooperation 23 amongst family members in regard to these parcels and 24 their relationship amongst each other. And it's our 25 position that the defendants' conduct in this case
Page 184 1 I N D E X 2 3 Closing argument on behalf of the Plaintiff.....187 4 Closing argument on behalf of the Defendants.....203 5 Rebuttal argument on behalf of the Plaintiff.....214 6 7 8 REPORTER'S CERTIFICATE.....222 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 186 1 amounts to a breach of that contract, and that the 2 heirs of the fathers are obligated under those implied 3 contractual obligations, and their conduct here has 4 breached those and entitles my client to the costs and 5 attorney's fees of having to bring this case where, 6 otherwise, with their cooperation, if they had 7 cooperated under the implied contract, then my client 8 wouldn't have had to take on this extraordinary expense 9 and burden to get to where we are today. 10 THE COURT: All right. And you're 11 indicating that, under that theory, there's sufficient 12 evidence and testimony based on what's already been 13 presented and no further testimony? 14 MR. INGLESE: The only additional thing 15 would be my attorney's fee affidavit. 16 THE COURT: Attorney's fees affidavit, I 17 understand. And I understand the theory, and, as I've 18 indicated before, I think that the way that we'll 19 handle it is I'll take that request for the attorney's 20 fees under that theory under consideration along with 21 the other issues after having heard from you-all on all 22 of the matters, and that if there's an award of 23 attorney's fees, then I will revisit that in the sense 24 that I'd request affidavits and further testimony and 25 cross, if necessary, at that point.

MR. WATTS: May I be heard on that issue?

THE COURT: Relative to the attorney's fees?

MR. WATTS: Yes.

THE COURT: Absolutely.

MR. WATTS: They're basing their theory on contract. We don't have any kind of written contract with any kind of written provision. Defendants haven't signed anything. So, fundamentally, there might be -- their concept of an implied contract going back to brothers who are now deceased is pretty specious. But, basically, there's no written contract, not signed by -- nothing signed by the defendants obligating them to pay any kind of attorney's fees, no -- I don't see how they can be privy to any kind of contract between their brothers, between the brothers. They're just -- the brothers are gone, and now we've got new parties involved. But, fundamentally, there's no written contract, and the defendants haven't signed anything.

THE COURT: I understand your position. All right. And as far as closing summary from the plaintiff?

MR. INGLESE: Thank you, your Honor.

May it please the Court, I'd like to start by bringing to the Court's attention the transcript from our summary judgment motion where Judge Watson was

And the Court said, "I didn't do that. That issue was never in front of me in that case."

And to support that, you also have the complaint, I believe it's Exhibit 14, which is the 2006 complaint, which doesn't present a request for an easement, it doesn't make access an issue. And, additionally, the Court has the 2008 order, where it doesn't address the issue of access in that order. And so the issue of access wasn't ripe in 2008. It was never before the Court. And she's not -- there's no obligation under the law that she bring any and all potential claims. She only has to bring the claims that are available to her at that time, which was the issue of ownership, and the issue of access was not ripe at that time. So I think the res judicata defense has to fail given those three supporting documents and exhibits for the Court.

The next issue that the defense would like to have to Court rely on --

THE COURT: Let me interrupt just for a second. It could have been raised.

MR. INGLESE: But there's no obligation, there's no affirmative obligation, that she has to raise potential claims. She only has to raise existing claims.

on the bench. And this goes to the defendants' res judicata argument or defense of res judicata. And on page 25 and 26 of the transcript, there's a discussion of the issue of res judicata and whether the 2008 order in the -- the case originating in 2006 resulted in an order of this Court in 2008, the discussion as whether or not this access issue was presented at that time, and the Court says after a comment from -- Excuse me. The Court states on page 26, line 4, "In my order of 2008, in my notes from that trial, she testified that if I found her to be owner of that tract, that would give her access is my understanding. I found that she wasn't owner of the tract, so I don't -- she may not -- she may or may not have access. I don't know. That's what I -- I hadn't decided yet. She testified that if I found her to be the owner of the parcel, then that would give her access to the property."

Mr. Watts comments, "But I was suggesting that that opened the door to the issue of access, which is before us today in this particular court, and so it must have been discussed and you must have ruled."

And the Court said, "I didn't rule anything denying her access in my order."
"Okay."

THE COURT: My question is: It could have been raised, could have been raised in the alternative.

MR. INGLESE: It could have, sure, but there's no legal --

THE COURT: Same parties, same property, same dynamic.

MR. INGLESE: Not ripe for Court consideration. And, actually, I will retract that, withdraw my concession on it could have been raised. I don't think it could have been raised. I don't think it was ripe at that time. The only issue ripe for the Court was ownership. That was the only issue pled, and it was the only issue that the Court ruled on.

She doesn't have to plead in the alternative for a potential claim that may be out there. She only has to plead all existing claims. And at that point in time, there was no claim for an easement because her position was she owned it, and that's what was pled, and that's what the Court decided, and that's what the Court informed us of in the summary judgment transcript.

THE COURT: Sorry to get you off track.

MR. INGLESE: No problem.

MR. WATTS: Your Honor, may I add some comments?

1 THE COURT: We'll let him close in full and
2 then come back, and you can certainly address it at
3 that point.

4 MR. WATTS: Yes, sir.

5 MR. INGLESE: Additionally, Mr. Watts, in
6 the summary judgment motion, where it's most evident,
7 as well as in yesterday's trial, wants the Court to
8 believe that the Doctrine of Easement by Necessity is
9 exclusively available to grantees, and that's just not
10 the law. And I would bring to the Court's attention
11 Poole vs. Edwards, 197 South Carolina 280, where the
12 Court says, "A right of way from necessity is where a
13 man, having several tracts of land, sells one which is
14 surrounded by the others, having no way of ingress and
15 egress but through one of those reserved. So, even if
16 he reserves the tract in the middle for himself, he is
17 entitled to a way through necessity."

18 That's where we are here. Mr. Watts has
19 acknowledged that Thomas Jackson is the grantor, the
20 original grantor, whereby he has essentially created a
21 need for an easement on his own. And the Court has
22 said, Supreme Court has said, even in that case, the
23 doctrine of necessity or, excuse me, an easement by
24 necessity can and should and will apply because we have
25 the policy of allowing people and promoting people to

1 not this case. This case is distinguishable from that.

2 The other side would like you to believe
3 that a severance equals a conveyance, but that's not
4 what the elements are. The elements of easement by
5 necessity are unity of title, severance, and showing of
6 necessity.

7 Severance is something more than conveyance.
8 If the Supreme Court wanted conveyance to be the
9 element, they would have said conveyance. But a
10 severance, according to Black's Law Dictionary,
11 incorporates something more. Black's Law says that
12 severance means the act of cutting off, the state of
13 being cut off. And we have established through the
14 evidence that my client's property, 016, has been cut
15 off from what is now 113, where access had previously
16 been established, or, at the very least, it was the
17 most recent in time severance. And so we believe that
18 severance and conveyance are not equal. Mr. Watts is
19 going to want to make those terms synonymous, and,
20 again, if that's what the Supreme Court intended, they
21 are certainly smart enough to have used "conveyance" if
22 that was their intention.

23 And then we come to the testimony of the
24 expert witness and the plaintiff witness.

25 The crux of the case really falls on Rubin

1 be able to utilize their property in reasonable ways.

2 The other side would also like you to
3 believe that this is a case where the grantor
4 self-created the necessity. Based on this case, that
5 is overcome by the Supreme Court language in Poole v.
6 Edwards. But, additionally, I would like to
7 distinguish the self-created necessity cases that are
8 out there. I'm not sure which cases Mr. Watts will
9 rely on for that position, but each of the cases in our
10 research specifically incorporate a request for or the
11 creation of some improvement on the property. In other
12 words, a structure was built that blocked access, which
13 created the necessity for some other access. I believe
14 that was the Clemson v. First Protestant case. And
15 there was an additional case dating back to the late
16 1800s where a structure was built and blocked, and
17 there were alternative ways in by water, and, again, it
18 was an improvement. There was also a Bell South case
19 where Bell South was requesting to expand its easement
20 and do some improvements and expand the utility. The
21 Court said, "That was self-created. You've got to find
22 another way or you've got to pay these people. It's
23 not a necessity for you to have that."

24 So those self-created arguments, again, are
25 in the context of improvements to the property. That's

1 Jackson's estate and the deeds to Rubin Jackson and the
2 deeds and will out from Rubin Jackson. And you heard
3 from the expert witness, and I believe it's in Exhibit
4 7, I'm not sure, 7B or 7C, but Rubin Jackson received
5 three acres of land and deeded out one acre to the
6 east, which is the Mullinax property. This one-acre
7 tract is known as 022. That left Rubin Jackson with
8 two acres because, remember, he received three acres
9 from his father. The remaining tract currently, as a
10 result of Judge Watson's 2008 order, is three acres.
11 Three acres plus one acre is four acres. So an
12 additional acre was created by operation of law from
13 the 2006 case.

14 Mr. Watts pointed out that Mr. Rubin
15 Jackson's property was bounded on the south by an
16 adjacent property owner, but what you heard from the
17 expert witness, and this is important, is that
18 oftentimes roads are skipped in those old deeds in
19 their abutting and joining descriptions, and, if the
20 expert witness is right, that old deed would not have
21 referenced any access point along the south side of
22 113. It just would have named the adjacent property
23 owner to the south, which is what it did.

24 Corroborating the expert's theory is the
25 will from Rubin Jackson in Exhibit 7D, I believe, and

that will, when Rubin Jackson wrote his will, he referenced the two acres left that he had to devise, and he referenced a northern property line ending at the Mullinax property, and he referenced this eastern property line, and he referenced the road. He never referenced a southern point of his property.

In addition to that, you heard from the defendants' own testimony the cooperative and collaborative nature of the working of this land back here between the two brothers. This court can reasonably infer that Mr. Rubin Jackson's omitting a reference to the southern portion of the property in his will was an acknowledgment of his brother's ability to access Mr. John Jackson's, his brother's, own property through that southern portion. You've got the expert witness's testimony, you've got the deed, you've got the will, and you've got the defendants' own description of the brothers' cooperation supporting inferences regarding an access way on the southern parcel, southern portion of that parcel.

THE COURT: So is that an acknowledgment of ownership or easement?

MR. INGLESE: I think when you combine the will that acknowledges two acres left to devise and you acknowledge the original conveyance to Rubin from his

or, if that's not satisfactory, by conveyance through the deeds that were created by the defendants, the deed and plats filed in 2011.

And that leads me to the laches issue, because the other side wants to say that the plaintiff waited too long because in 1935 all these people knew that Mr. Jackson landlocked himself.

First of all, there's an absurdity to that argument because the rarity of a property owner ever landlocking himself was evidenced by the expert testimony. And additionally to that, you heard from the defendants the cooperative nature of these two brothers, the brother owning 016 and the brother owning the combination of 117 and 113 today. For laches to apply, the plaintiff would have to have known or have had notice or should have had notice of a problem. Well, the testimony that the Court heard yesterday is that the first point in time where there may have been a problem was when the trailer was placed somewhere in this area along the route to 016, and that was in approximately 1998, and Miss Mills' testimony was that she filed the 2006 action to stay any statute of limitations so that her perceived ownership would not be jeopardized by the placement of someone else's personal property on her real property. So that was

father, which was three acres, I think it acknowledges ownership, but that -- We can't go back. Judge Watson created ownership in the defendants. Whether that was right or wrong is not an issue for us.

Regarding the severance issue -- because unity of title is not an issue. They've admitted unity of title. The severance issue is one of importance for for the Court to decide. And there's three options available. There's the 1935 deed, which is the position of Mr. Watts, that the current 113 was severed from 016 in 1935 by conveyance to Rubin Jackson. That's one option. But, of course, that's not clear because there's now four acres included in that, but that conveyance only said three acres. And we heard from the expert at length about the unclarity of what was conveyed and the unclarity of title and ownership between 1935 and the Court's order in 2008.

Our position is that title was either vested when the order of the Court came down in 2008 or it was vested in 2011, when those new deeds were created. And that's part of 7D, Exhibit 7D, as well, where we have a clear property description, and we have clear owners, and we have clear grantors, which is a result of the 2008 order, and severance, and our position is either by virtue of operation of law by Judge Watson's order,

when she first thought there was a problem.

Arguably, arguably, there was a problem a little bit earlier than that, in 1985, when Mr. Rubin Jackson passed away, when there was some discussions, but those discussions don't create a legal claim. It was the legal claim -- the concern about the statute of limitations that caused Miss Jackson to go ahead and file. And that short period of time, 1998 to 2006, certainly doesn't give rise to a laches defense. And then in 2008, you heard the testimony of Miss Mills where she talked about her personal health and financial issues and her inability to follow up since 2008. So 2008 to 2012, when we filed this case, certainly doesn't give rise to a laches defense.

You have before you, your Honor, 14 exhibits, all on behalf of the plaintiff, most of which is public record and indisputable evidence. However, we brought to you, for the benefit of the Court, an expert to testify on some of these deed issues that create some cloudiness for the Court.

I think that that expert witness described for the Court, in his expert opinion, a severance in 2008 as a result of Judge Watson's order. And in the expert's mind, as he testified, before that point in time, ownership, as he would have seen a title search,

was not clear, which means that a severance cannot be found prior to 2008. If you rely on the expert witness, which I think we should, severance cannot be found before 2008.

In the alternative, we have the deed to the defendant in 2011, which that would be consistent with the conveyance and consistent -- and consistent with a severance, but we believe that, by operation of law, the Court order in 2008 created a severance regardless of whether conveyance was created by that Court order.

The plaintiff is before you requesting an easement, and we believe an easement by necessity is the most appropriate because of the unity of title, the severance, and the necessity.

The case law in *Graham v. Causey* talks about what kind of a necessity is necessary, and it's a reasonable necessity. The defendant doesn't have to show an absolute necessity, but in this case the evidence is clear by virtue of the landlocked parcel that there is an absolute necessity, something more than what is required under the law.

In *Graham v. Causey*, the Court also states that the South Carolina Supreme Court has long recognized easements may arise through necessity. From the earliest period of our judicial history, the

line of 113. The trailer is only 14 feet away, so a waiver, a variance would be required, or, in our view, the defendants should pay to move the trailer because my client has taken on so much expense in this case. She shouldn't have to continuously pour out money where equity demands some remedy for her.

In the alternative, we presented Exhibit 12, I believe, which proposed a 30-foot easement along the southern portion of 017 and then a southward drive to 016. It seems to me to be less efficient, but we'd be willing to hear from the defendants on the issue of placing the easement.

The plaintiff also requests in the form of attorney's fees, and you heard some testimony about the expense that she has borne, and, again, the defendants testified as to facts and circumstances that this court can infer an agreement among the brothers with regard to the use and cultivation and raising of hogs back there, and it's a reasonable inference that that was a contractual obligation between the two. It's not a -- it's not a conveyance of land that requires a writing, as Mr. Watts would suggest, under the Statute of Frauds. It's simply an agreement among brothers on the utilization and sharing of assets. And that is what the defendant testified to, and that is an implied

acquisition of an easement of right-of-way over another's land by necessity has been clearly recognized and protected, and this is consistent with our state's policies promoting and encouraging reasonable uses of land.

This is one of those rare cases where the law, the facts, equity, and policy are on the side of the plaintiff. Unusual circumstance in a trial, and we have so much overwhelming evidence in fact and law in our favor. And, therefore, the plaintiff seeks relief in the form of an easement. And the real question for the Court isn't, Should I grant an easement? The real question is: Where are we going to put it? What is an equitable place to put the easement? Do we put it south of the trailer? Do we put it north of the trailer and have it kind of cross 113?

The county requires a minimum of 25 feet, I believe, it may be as much as 30 feet as a minimum, and that is for emergency vehicles and garbage trucks to be able to get in and out of there as well as for a shoulder and drainage along the edge of a driveway, and the plaintiff seeks that relief, but is really flexible as far as where it goes. With an order from this court, we could probably get a waiver from the county if the easement was placed along the south property

contract or contract in law which the heirs are bound by and would entitle my client to some relief on the litigation expenses that she has incurred.

You heard from the defendant a statement about my client no longer being part of the family, and I think this is demonstrative of, unfortunately, all too typical family feuds over money and land and the intentions of dead people, which is a difficult thing to ascertain. Instead of recognizing that it's inappropriate to burden people's property who have nothing to do with the family, and the witness even acknowledged that inappropriateness, instead of moving on and saying, "Gosh, Miss Mills, you're right; you're in a tough spot, and your father and my father loved each other. Why don't we make sure you have access so you can use your property." That's not what happened. Instead, he disowned his cousin, they continued this family feud, and all to the expense of my client, which makes the equity needed to level out this situation from the Court, that any expenses associated with filing an easement in the county and moving the trailer and reimbursement for attorney's fees should fall on the defendants.

And with that, I'll reserve time for rebuttal.

THE COURT: Thank you.

Mr. Watts.

MR. WATTS: May it please the Court, the first thing I'd like to call the Court's attention to is Article I, Section 13, of the South Carolina Constitution. Paragraph A says that, "Private property shall not be taken for private use without the consent of the owner." Private property shall not be taken for private use without the consent of the owner.

The next point I'd like to make is that Mr. Feeley and Miss Mills placed great store on stated acreage in all of these old deeds. I have some case law that would refute that entirely.

The first case is -- the first case I'd like to call the Court's attention to is Holden v. Cantrell. This goes back to 1915, Supreme Court of South Carolina. In that case, the defendant appealed the Court's denial of his request to charge the jury. One of the -- well, two of the requests said this: "Likewise, the call for quantity or a certain number of acres must yield to marked lines." The next charge that he wanted was, "a statement of the quantity of land supposed to be conveyed and inserted in a deed by way of description must yield to natural or permanent objects called for in the conveyance."

sure what he's relying on there. The three elements are unity of title, severance of title, and necessity. I don't think we've got any proof as to unity of title. Now, the pleadings say that Miss Mills owns this two acres at the bottom of the Tract 11 and that she claims an easement across Miss Janet's property just to the north. So, I guess one theory is that Miss Mills owned both pieces of property, and the Court in 2008 severed the top piece away from her, but that doesn't -- that's not borne out in the record. There's no clear title or no clear deed for that top strip of property into Miss Mills. There's no -- there's no record of that. There's no deed that gives her that piece of property so that the Court in 2008 could take it away. I think there was some testimony or argument that maybe the top strip was owned by the estate of Thomas Jackson. If that's the case, then there's no unity of title. The estate of Thomas Jackson would be a wholly different entity than Miss Mills. So I don't believe there is unity of title.

With respect to the concept of severance, I pointed out yesterday that the order itself standing alone is not a deed. Now, Mr. Inglese was talking about severance not being a conveyance or not having to be a conveyance. And I'll quote from a recent case.

The Court went on to explain that that was error, that the judge, the trial court, should have allowed those, those requests to charge. In the middle of the opinion, the Court also says, "There was no error in allowing Plaintiff's surveyor to testify to the acreage of the three tracts into which the original tract had been cut, as claimed by the respective owners, even though one of them was not involved in the litigation. While quantity, as a matter of description, is ordinarily one of the lowest in the scale of importance, yet there may be a circumstance in which it would be entitled to a controlling influence."

A later case in 2008, James W. Coker v. Catherine Cummings, this is Court of Appeals, says, in essence, the same thing. "Under the rules for determining disputed boundaries, the quantity of land named in the deed is ordinarily one of the lowest in the scale of importance." They're quoting Holden v. Cantrell there.

So bottom line is that the stated acreage in a deed is not important or of very little importance.

With respect to the concept of easement by necessity, Mr. Inglese said that we admitted unity of title, but I don't remember any evidence or any testimony yesterday about unity of title, so I'm not

This is Paine Gayle Properties v. CSX Transportation, Court of Appeals 2012. It has a very nice, neat description of the easement by necessity. And for severance of title, it says, "Severance of title means that title to a larger tract was severed by conveyance of a part to the plaintiff's predecessor in title and of a part to the defendant's predecessor in title."

So all of these cases that deal with easement by necessity that Mr. Inglese found and I found all deal with a grantee of an interior lot demanding or trying to defend an easement by necessity across the original grantor's property out to a public right-of-way, and in all those cases, the facts would indicate, the facts show that there was one person that owned this piece of property, and that person conveyed by a deed title to an interior section, and so, therefore, the law implied that the grantor implicitly gave an easement across his property as an appurtenance to the land. So all the cases demonstrate that there was an actual deed conveying title to property. So I think -- I think the concept of severance is -- does mean a conveyance, it does mean a deed conveying title to property to somebody else.

Now, with respect to necessity, Mr. Inglese referred to Poole v. Edwards. Again, Poole v. Edwards

1 is a situation where a grantee was looking for an
2 easement across the grantor's property to public
3 right-of-way. This statement that Mr. Inglese quoted
4 is actually dicta, but it's rather -- rather skimpy.
5 So Poole also cites *Brasington v. Williams*, which has a
6 much broader, much more in-depth description of that
7 kind of situation where a grantor might be entitled to
8 an easement by necessity. I'll quote from that.
9 This -- well, *Brasington* actually quotes *Crosland v.*
10 *Rogers* at length about this kind of issue. "It seems
11 to be less difficult for the grantee of the portion
12 sold to establish easement than the grantor for the
13 reason that the grantor ought not to be allowed to
14 derogate from his absolute deed by claiming rights and
15 burdens over the land sold in the face of his covenant
16 of warranty." So the point is a grantor gives somebody
17 a general warranty deed but retains the interior piece
18 of property, then tries to go back and derogate that
19 general warranty by saying, "Hey, I need access to the
20 highway. I didn't put it in my deed. Sorry, but I
21 need it now."

22 There's got to be more than a reasonable
23 necessity in order to imply that the grantor reserves
24 some form of easement by necessity. Further into the
25 opinion in *Brasington*, it says, "If, on the other hand,

1 Now, what's still confusing is whether or
2 not Miss Mills lost any of her property at all. In the
3 2006 case, the legal description that she -- she had in
4 her complaint was the two acres that was described in
5 the deed to her from -- from her mother and the
6 other -- and the other -- the heirs of that other
7 sister of Mr. John Jackson.

8 In this case, it's the same legal
9 description. She describes her dominant estate by the
10 same legal description. So she apparently didn't lose
11 any property. She didn't actually lose any property.
12 The court in 2008 didn't sever any property from her.
13 If anything, it was some sort of theoretical exercise
14 or academic exercise to clear the title to Lurline's --
15 to clear the claims off of Lurline's property.

16 Again, these cases reflecting or these cases
17 about easement by necessity all deal with an actual
18 conveyance of real land away from a grantor, and
19 there's just -- there's just nothing here to indicate
20 that Miss Mills lost any property in the 2006 case.

21 With respect to *res judicata*, we do have the
22 same parties, Miss Janet -- the property that's
23 described in this case as the servient estate over
24 which Miss Mills wants an easement is now owned by
25 Janet Hudson. Janet was a party to the first suit.

1 the quasi-servient tenement is granted while the
2 quasi-dominant tenement is retained, no easement is
3 reserved by implication unless it is strictly necessary
4 to the enjoyment of the property retained." So it's
5 not reasonable necessity, it's strict necessity, in a
6 situation where the grantor or it's going to be implied
7 that the grantor reserves some type of easement by
8 necessity.

9 Here again, *Brasington v. Williams* is a case
10 where the grantee of an interior lot sought an easement
11 across grantor's property to a public right-of-way.
12 All this is a great deal of dicta in the *Brasington*
13 case.

14 Interesting, *Brasington v. Williams*, the
15 grantee in that case had land that was land -- was --
16 was located within the oxbow of the Wateree River. The
17 testimony cited in the case explained that at that
18 point the river was about 600 feet wide, navigable
19 water, and on the other side different property owners
20 all together. So the concept of using or getting out
21 of the grantee's property via a bridge or a ferry
22 across the Wateree River was -- was a situation where
23 naturally a strict necessity would have been
24 appropriate, but, again, the *Brasington* case talks
25 about that strict necessity in the way of *indictum*.

1 The circumstances or the transaction is the same. It's
2 whether or not this strip of property north of
3 Miss Mills's belonged to her or belonged to Lurline
4 or to -- so we're dealing with the same transaction.
5 Did that occur in 1935, did it occur in 2006 or 2008?

6 Plenty of case law indicating that
7 *res judicata* applies to a situation where an issue
8 could have been raised. So she raised the title issue
9 in 2006, but she also had the opportunity to raise the
10 access issue in the alternative. Plenty of evidence to
11 the effect that she was seeking an access easement
12 since 1985, and so had access easement on her mind when
13 she filed this 2006 lawsuit, so should have pled, in
14 the alternative, "I want title to the land, but if you
15 don't give me title to the land, I at least want an
16 access easement." That's exactly what she did in this
17 case. The first cause of action, which has been
18 withdrawn, was originally written to try to gain title
19 to the land, but, in the alternative, get an easement.

20 With respect to the laches concept, there's
21 testimony; Miss Mills said that she started asking the
22 defendants for some kind of access all the way back to
23 1985, and they refused. And so it wasn't until 1998,
24 when somebody put a -- installed a mobile home, Miss
25 Janet installed a mobile home on the property, that

Miss Mills began to think more hard about it, hard about the issue, and then finally in 2006 filed a lawsuit claiming title. So, knew about it in 1985, attempted to get some kind of access in 1985, allowed additional improvements on the property before filing the lawsuit in 2006. So there's a situation where the parties changed their position to their detriment.

I think laches also goes to the fact that the severance of title, from our perspective, was back in 1935, and so you could stretch this laches issue all the way back to then. So we've got people that have died a long time ago. We've got no evidence to determine what their intent was with the conveyances of this property or their intent about how to use it or their intent about sharing it or any kind of verbal contract between brothers about how to use the property.

Laches is -- this argument of laches is really concomitant to the argument for the statute of limitations and the statute of repose. If we say that the severance was in 1935, Thomas landlocked himself in 1935, then he died in 1947, according to the records. That's 12 years where he could have gone back to Mr. Rubin and said, "I need access. I didn't think about it before, but it looks like I need to use your

years of time passing. If you -- if you follow her argument that she understood that she owned the property at that time, then you've got to consider her testimony to the effect that once she started in 1985 to acquire access or get to her property and Rubin's children refused her access, then that could be a starting point for this issue of the statute of limitations. So 1985 to 2006 is 19 years. And, of course, we've got the 40-year statute of repose that's still in effect, and absolutely nothing was done about this access easement or any kind of issue to title to this strip of property north of Miss Mills for 80 years.

If you go back to Thomas's conveyance in 1935 up to 2006, when Miss Mills filed the first lawsuit seeking title to that property, that was 71 years. That's well over 40 years, obviously. And now it's 2015. Eighty years has passed. And, naturally, of course, we all know that, we all understand that this 40-year statute of repose is designed, is in place for this very kind of situation. Generations and generations own this property and pass, and then all of a sudden second generation pops up and makes some kind of claim for it after all this time has passed and the property has been used and perhaps in some

property to get across to the highway because I've already conveyed all this other property on the other side to other people." It was a period of time before Rubin sold his property to Mr. Mullinax that he could have gone out to Branch Road, but that was apparently not done either.

Once Mr. Thomas passed away in 1947, he passed intestate, so now the property belongs to his heirs. They held onto it for 22 years without doing anything. There again, maybe Mr. Thomas had some understanding with Mr. Rubin that he could pass through Mr. Rubin's property to get to Highway 78 -- I mean Highway 17, but now his heirs are involved. Now we've got a whole set of another generation. Those folks probably wouldn't have had the same kind of understanding with Rubin, and so maybe should have looked at this issue and addressed it with Mr. Rubin then, but that was 22 years where nothing was done.

In 1969 these heirs gave most of the interest of the property to John Jackson, Miss Mills's father. He had it for five years before he passed away. And then her mother, Eunice, had it for four years before she conveyed it to Miss Mills. Now, Miss Mills has the property since 1983, and she doesn't do anything about this issue until 2006. That's 23

circumstances maybe reconveyed to others. The whole point of the statute of repose is to make -- is to settle title issues definitely and once and for all after 40 years has passed.

Mr. Inglese just a moment ago went back to the attorney's fees issue. As I said, there's no statute that would apply to this situation. There's no written contract that the defendants signed which would obligate them to pay any attorney's fees if there were a breach of that contract. The issue of attorney's fees was not pled, and very little basis was developed in the testimony about any -- well, very little testimony established any basis for attorney's fees, so I think that's -- that's definitely not an issue here.

Thank you.

THE COURT: Mr. Inglese.

MR. INGLESE: Thank you, your Honor.

In *Brasington v. Williams*, the Court states, "It is, therefore, when the requirements of a way of necessity are fully met, the, quote, consent of the owner, end quote, is as much implied as it is presumed in a presumed grant arising from a hostile possession, and it certainly will not be contended that a prescriptive right is denied under Constitution of 1895." So the Court has the authority to vary from the

statement Mr. Watts expressed from the Constitution; as is always the case, the courts have the ultimate decision on the interpretation of the Constitution and what the law is, and that was the Supreme Court in that case.

I'm not sure of the relevance of *Holden v. Cantrell and Coker v. Cummings* other than it may be that the point of that was that it goes to the weight of the evidence. There's no jury here, so *Holden* doesn't really have any application; and *Coker*, regarding the importance of acreage, I think that, relative to this case, it is important and the testimony of the expert witness certainly makes those acreage numbers very relevant in the current case.

I think it's quite disingenuous to hear at this stage in the litigation that unity of title is not -- is all of a sudden at issue. I stated in my opening that unity of title was not an issue, and that was based on the defendants' response to Plaintiff's request to admit, in question number one, "Admit that the disputed parcel and the plaintiff's parcel were both part and parcel of the estate of Thomas Jackson, grandfather of Plaintiff, including a tract of land approximately 10.3 acres more or less." Answer: "Admit." In addition to that, we heard from the expert

out has come down and instructed the trial court to limit the application of the doctrine of easement by necessity only to grantees, and so it doesn't follow from the application of *Brasington* that the doctrine is only available to grantees. We have policy and equity to support that position as well.

And Mr. Watts went into the issue of a general warranty deed and a grantor's retraction of a general warranty deed. That is absolutely not the case here. Miss Mills is not going back on any general warranty deed. There's no general warranty deed applied to the residual missing acre from the early conveyances from the 1930's deed. There's no deed that identifies that residual acre, and there's no deed for Miss Mills to go back and retract anything from, and so that's just simply not applicable here.

Mr. Watts expressed that, in regards to *res judicata*, the plaintiff should have pled, but he did not identify anything under the law that requires the plaintiff to have pled in 2006 an alternative form of relief. The issue of access was not ripe, and, in fact, from 1985 to 1998, there were no issues. My client was perfectly entitled to take the position and sit on it that she was the owner of the property, and absent some conduct from another party, she had no

who said all of these parcels were part of Thomas Jackson's 10.3-acre parcel. So I'm surprised to hear that at this late stage in the game.

Mr. Watts points out that the 2008 order of this court is not a deed, and I think we've addressed that severance and conveyance are not equal, and if the Supreme Court wanted conveyance to be the element, then it would have stated so, and Black's Law provides us a broader definition, and I believe it is applicable in this case.

Furthermore, if you take the order of the 2008 court to its ultimate conclusion, then the Court would look to the 2011 deed, which created a right and a residual tract of land that previously we were uncertain of, and that is a point in time in which 016 and 113 were conclusively severed, and there's lots of evidence from the expert regarding that issue.

Mr. Watts points out that CSX Transportation applies a doctrine of easement by necessity exclusively to the grantee, but that's just not correct. And while dicta from *Poole v. Edwards* is instructive, the equities in this case would necessitate an application of the dicta in *Poole v. Edwards*.

There is no prohibition from the application to grantors. None of the cases Mr. Watts has pointed

affirmative obligation under the law to go to court and create some new deed or some new quiet title action. It was when the conduct of the defendant was manifested on what she perceived to be her property that she did take action. But before that, there was no issue, and therefore, there was no laches and no requirement for her to come to the court seeking relief. We don't come to court seeking relief when there's not a problem.

And I would just add the doctrine of equitable tolling as a catchall in case none of the other arguments against *res judicata* and laches are available or the Court decides that that's not applicable. We always have available the equitable tolling doctrine, which says that, in the interest of justice, in the interest of getting resolution to issues before the court, the court can apply a stay on statutes of limitation and go ahead and hear the case and make decisions in the interest of equity and justice.

And that's why we're here. We have no alternative. The plaintiff has sought alternatives. The only alternative identified by the defendant is on a tract not privy to unity of title and would require the expenditure of resources, whereas an easement by necessity is an entitlement to the plaintiff and does

Page 219

not necessitate any payment on her behalf. And given the history and unity of title going back to Mr. Thomas Jackson, it's wholly appropriate and applying the law that this easement be placed on the most recent severance across 113.

Thank you.

THE COURT: All right, gentlemen. I appreciate you-all's time and effort in this. Well presented on both parts. I have all of the exhibits. I've heard the arguments. You presented me some of the cases. I'll carefully review my notes, look at all the documents. My intention is to do that as quickly as possible and then let you know as to an outline of my ruling. I'll contact you, presumably by e-mail, with some basic instructions regarding preparation of an order, and I'll include in that a notation that, even though that says that's my intention, it's not an order until the order is signed. I can change it or modify it, may go wholesale whenever it's prepared or may modify it up, depending on what's necessary with it. But I have lots of stuff to look at and will take some time to review all of that, and then I will let you-all know, like I said, hopefully as quickly as possible so this thing can be put to rest. Okay?

Anything further from either party?

Page 221

constitutional case law that I relied on.

THE COURT: And you can hand that up.

MR. WATTS: Here we are.

THE COURT: All right. Thank you.

All right. Ladies and gentlemen, you-all, the lawyers did a good job. I appreciate their presentation and efficiency in presenting this. It was well done on both parts. It's a difficult decision. And, like I said, I'm going to carefully review everything, and I'll let you-all -- let your lawyers know how this goes. Okay? All right. Thank you, gentlemen.

(The proceedings concluded at 10:42 a.m.)

Page 220

MR. WATTS: May I hand up copies of the cases that I was referring to in my summation?

THE COURT: That would be wonderful. Thank you.

MR. INGLESE: There should be copies from the summary judgment motion of some case law that was presented.

THE COURT: I have gotten that and the most recent cases you handed up yesterday.

MR. INGLESE: May I approach and hand you my card with my most recent e-mail address?

THE COURT: Sure. I figured it was probably on the...

MR. INGLESE: This may be an updated one.

THE COURT: Okay. Got it. And your e-mail is correct on your letterhead?

MR. INGLESE: Yes, it is.

THE COURT: Mr. Watts?

MR. WATTS: I'll --

THE COURT: Give me a card, just to make sure.

MR. WATTS: -- give you a card so you'll be sure to have it.

THE COURT: Thank you, sir. All right.

MR. WATTS: There's a stack of statutory

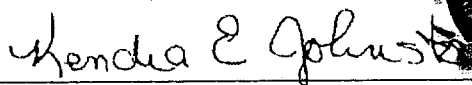
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing proceedings, and that the transcript is a true record of such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 15th day of May, 2015, in the City of Charleston, County of Charleston, State of South Carolina.


Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) THE NINTH JUDICIAL CIRCUIT

CYNTHIA JACQUELINE JACKSON)
MILLS,)

Plaintiff,)

v.)

JANET LYNNE HUDSON, HENRY)
RUSSELL JACKSON, and MILDRED)
JACKSON HUDSON,)

Defendants.)

CONDENSED

Case No. 2012-CP-08-3013

PROCEEDINGS BEFORE THE HONORABLE DALE VAN SLAMBROOK

MOTION TO RECONSIDER

DATE TAKEN: Thursday, July 23, 2015

TIME: 9:30 a.m.

PLACE: Berkeley County Courthouse
300-B California Avenue
Moncks Corner, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

1 APPEARANCES
2 REPRESENTING THE PLAINTIFF:
3 CHRISTOPHER INGLESE, ESQUIRE
4 1011 Bay Street, Suite 305
5 Beaufort, South Carolina 29902
6 chris@ingleseandassociates.com

7 REPRESENTING THE DEFENDANTS:

8 PATRICK R. WATTS, ESQUIRE
9 Watts Law Firm, P.A.
10 133 East 1st North Street, Suite 6
11 Summerville, South Carolina 29483
12 pat.watts@wattslawfirm.com
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (The proceedings commenced at 9:30 a.m.)
2 THE COURT: Good morning. Good morning,
3 gentlemen. I believe we're here on your motion,
4 Mr. Inglese; is that correct?

5 MR. INGLESE: That's correct, your Honor.

6 THE COURT: Okay. And this is the Cynthia
7 Jacqueline Jackson Mills vs. Janet Lynne Hudson, et al,
8 2012-CP-08-3013; correct?

9 MR. INGLESE: That's correct, your Honor.

10 THE COURT: Okay. I will hear from you,
11 Mr. Inglese.

12 MR. INGLESE: Thank you, your Honor. May it
13 please the Court, my client is on the way up, so just
14 to let you know that she is coming. Pardon the
15 interruption. And one quick question. I didn't know
16 if the Court has the exhibits available. I don't
17 anticipate they'll be necessary, but...

18 THE COURT: I did not bring them into the
19 courtroom with me. I do have them in my office. If I
20 need to grab them, they're just a minute or two away.

21 MR. INGLESE: And I'll just start. You
22 know, we filed the motion to reconsider, make some
23 amendments to the Order. I'm hoping to take this
24 opportunity to persuade the Court to change the essence
25 of the Order in favor of my client. This Order leaves

1 INDEX
2 INDEX OF EXHIBITS
3 (No exhibits were marked.)

4
5 REPORTER'S CERTIFICATE.....37
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 the property useless, and the equity would provide a
2 solution and access to this property for my client.

3 The property is clearly landlocked. I don't
4 think there's any dispute about the landlocked parcel
5 that has no access to a right-of-way, and there's no
6 other available remedy to Mrs. Mills other than an
7 easement by necessity. There is no legal obligation
8 from any property owner to the south to provide the
9 access that is necessary to get to a right-of-way. It
10 was never part of the same parcel, so there was no
11 unity of title. And she could go to them and ask them
12 from now to infinity if they will give her access, and
13 there's no legal obligation for them to do that. And
14 the same is true of properties to the west and to the
15 east because they were severed prior to the property to
16 the north, which was the last severance. Whether it's
17 1935 or 2008, it really doesn't matter because that is
18 the only place that the law can provide a remedy to
19 Mrs. Mills. And this Order essentially renders the
20 property useless.

21 Equity is one of those tools that the Court
22 has to order actions or remedies beyond money damages,
23 which this case requires an order to get to a public
24 right-of-way, and the Court has the power and tools to
25 issue an order that would be fair and reasonable. A

1 simple 25-foot easement with minimal impact on the
2 defendants is what is fair and reasonable under the
3 circumstances.

4 So getting to the motion, again, we hope
5 that this opportunity, and the rules provide this
6 opportunity to make this request, and that the Court
7 would find essentially a different order that would
8 provide some relief to the client; and, in the
9 alternative, obviously, there's some amendments that we
10 have proposed in the motion to reconsider that we're
11 here for.

12 And just going through our motion, you know,
13 I don't know how the Court -- if you'd like to go
14 through this one by one or if you even have time to do
15 one by one, but we can -- the first three paragraphs of
16 the motion I don't anticipate any objection on, but
17 Mr. Watts can let us know, and if there's no objection
18 on one through three, that essentially clarifies some
19 procedural background and requests that the
20 conveyance -- the chronology of the conveyances out
21 from Mr. Thomas Jackson be itemized in the Order, and,
22 number three, that a finding of fact be amended to
23 include -- including the defendants' predecessor in
24 title, Rubin Jackson, were the heirs of Thomas Jackson,
25 just clarifying who the parties are in these out

1 number 180-00-02-113, and/or Henry Russell Jackson, TMS
2 number 180-00-02-017.

3 This just clarifies that both Janet and
4 Henry are named defendants in the action. And that the
5 plaintiff's claims could be either due -- Miss --
6 Essentially, what happened after the 2008 Order, the
7 property was subdivided, and so I believe that Janet
8 Lynne Hudson is the owner, currently the owner, of the
9 southern portion of that parcel that was subdivided,
10 but that Henry Russell and Mildred all may have had an
11 interest in this case and, therefore, were named in it
12 because those two properties were once one. So that's
13 the nature of the first request, just to clarify that.

14 The second is that the Court revise the
15 second paragraph of the findings of fact section of the
16 Final Order. The second paragraph of this finding of
17 fact says that, By a succession of deeds during the
18 early 1930's, Thomas Jackson conveyed out most of his
19 property, and then it ends there, and we are proposing
20 that those conveyances actually be itemized out.
21 They're in the record, but we feel like the Order
22 should acknowledge the sequence of those out
23 conveyances and do so in chronological order. And this
24 would demonstrate that during Thomas Jackson's
25 lifetime, he would not have been able to access this

1 conveyances and their effect on the present parties.

2 THE COURT: Mr. Watts, to eliminate anything
3 that you-all may be agreeable to as far as any
4 revisions, is there any of the elements of paragraphs 1
5 through 3 or all of them, for that matter, that you-all
6 do not object to, just for clarification purposes?

7 MR. WATTS: Paragraph 1, I think, is not
8 quite right. It seems to me that the easement they
9 were claiming --

10 THE COURT: I mean, just for now -- I'll
11 hear from you on the arguments. Is there anything
12 wholesale that we can just kind of move to one side as
13 far as anything that you-all would agree to? If it
14 requires any fine-tuning, then I'll hear from you after
15 I hear from Mr. Ingles.

16 MR. WATTS: No, I'm not going to agree to
17 anything at this point.

18 THE COURT: All right. Mr. Ingles.

19 MR. INGLES: Your Honor, our first request
20 in our motion to reconsider and amend includes revising
21 the second paragraph of the Order regarding procedural
22 background, and we propose that it read as follows:
23 Plaintiff's second cause of action was for an easement
24 by necessity across real property -- excuse me -- real
25 properties of the defendants Janet Lynne Hudson, TMS

1 property from the south, east or west because of the
2 timing of these conveyances predating the issue of the
3 parcel to the north. So this clearly outlines that
4 this property to the south is not part and parcel to
5 the unity of title or the original parcel that has to
6 be considered in an easement by necessity, the original
7 10.3 acres of Mr. Thomas Jackson. So this just points
8 out those out conveyances and is supported by the
9 record, and I don't see why there would be any
10 objection to that.

11 Paragraph 3 in our motion requests that the
12 Court revise the seventh paragraph of page 2 from the
13 findings of fact, and this is the paragraph in the
14 Order that begins, Plaintiff's father, John H. Jackson,
15 acquired title to 5/6 of his father, Thomas Jackson's,
16 property by deed dated January 21st, 1969, and recorded
17 in book A-194, page 79. We are simply requesting that
18 that finding of fact include, which I believe comes
19 straight from the deed itself, that that conveyance
20 included residual lands, "residual" being the important
21 word to be included in there. And that is straight
22 from the deed, I believe. So it didn't just convey --
23 it didn't just convey the two acres, more or less. It
24 conveyed two acres, more or less, and inclusive of
25 residual lands. We feel that that is important for

consideration on the case moves on to appeal.

And in paragraph 4 of our motion, we request that there be a revision of findings of fact on page 3 of the Order to include, one, that the plaintiff testified that she accessed her property both before and after the death of Rubin Jackson, which is part of Miss Mills' testimony, and that that access was from U.S. Highway 17A, where we are proposing an easement access now.

Currently this paragraph, the second paragraph, page 3, says that, Sometime shortly after Rubin's -- Rubin Jackson's death in 1985, Plaintiff began asking Rubin's wife, Lurline, and his children, Henry Jackson and Mildred Hudson, for access across the property to her property, and they consistently refused to grant Plaintiff any access. And we feel that that's inconsistent with testimony and evidence before the Court, and what would be more appropriate would be the language proposed in our paragraph 4 of the motion, where the Court would acknowledge the testimony of Miss Mills and her access as well as the testimony of the defendant, who spoke about his father and his uncle working the land together, which clearly -- which clearly shows shared access for their uncle, my client's father, and the ability to get to his

father and uncle that she might have more land than she thought. However, that's not what her testimony was. Her testimony was that she always thought that she owned that land and that her understanding from the neighbor and from her uncle was that she owned that land. And so that is inconsistent, we believe, with what the testimony was.

Paragraph 6 of our motion requests that the Court revise the second full paragraph of page 4 from the findings of fact. Page 4, second full paragraph of page 4 on the Court's Order says that, On October 17th, 2012, the plaintiff commenced this lawsuit asserting that Judge Watson's March 2008 Final Order operated as a severance, giving rise to an easement by necessity across Defendants' property in favor of her property. And we're just requesting that the Court Order acknowledge that we did argue and we discussed with the expert on the stand that -- two alternative arguments; one being that there was a severance in 2008 when Judge Watson issued his Order, and, in the alternative, that there was a severance in 1935 severing the plaintiff's property from the defendants' property, and that the effect of that, regardless of the date of the severance, the same result must occur. So we're just requesting that the Court's Order acknowledge the

property. And so we would propose some changes there in the findings of fact.

Paragraph 5 of our motion requests that the Court revise the fourth paragraph of page 3 from the findings of fact, and this -- and the Order essentially says that, according to the evidence she presented for this case, her theory for the assertion was as follows; and then the Order goes into an articulation of the plaintiff's theory, essentially that the defendants were conveyed three acres; they -- or the defendants' father was conveyed three acres. He then deeded out one acre, leaving the defendants' father and subsequently the defendants with two acres, as clearly stated in the deed work, and that her -- regarding her parcel, her father gained two acres, more or less, and residual lands, as the language from the deed says, and, therefore, is unclear as to total acreage of her parcel; and that the significance of this modification is that the present characterization from the Final Order suggests that the plaintiff somehow discovered in some after the fact manner, say after 2008, that she might have had a claim to additional property and then brought the suit or -- excuse me -- brought the suit in 2006 to expand her lands. So let me clarify that to say that she may have discovered after the death of her

alternative arguments made and testified to during the trial.

And above, on the first paragraph of page 4, the Order says that, Plaintiff's expert witness concluded that the deeds Judge Watson referred to are the same deeds described in this Order, including the 1935 deed to Rubin Jackson. Well, that would go back to our paragraph 2 request, which requests that the deeds actually be identified in the Order. And, also, I think it should be revised because the expert didn't have the benefit of knowing what Judge Watson referred to in his case, and there's no record to reflect what Judge Watson referred to, so it's impossible for the expert to have made such a conclusion. He may have made -- I don't recall from the testimony or the questioning from Mr. Watts, but there may have been some implication or inference that that's the case, but if that was an inferred conclusion, then it should -- the language should be reworded to more -- more specifically and not so conclusively regarding what happened.

And the motion goes indepth on the two alternative arguments made regarding the severance date. And it's unclear from -- I mean, it sounds like the Court's Order is that there's a severance -- that

1 the severance happened in 1935, if I'm reading the
2 current Order correctly.

3 Paragraph 7 of our motion asks the Court to
4 consider -- reconsider the apparent conclusion of law
5 in the block quote at the bottom of page 4, and that
6 block quote gives the elements of easement by
7 necessity: unity of title, severance of title, and
8 necessity. And we would ask that the Court reconsider
9 the conclusions coming from the block quote. This
10 would be, for example, in the middle of the block
11 quote, Severance of title means that title to a larger
12 tract was severed by conveyance of a -- of a part to
13 the plaintiff's predecessor in title and of a part to
14 the defendants' predecessor in title.

15 The defendant is relying on an
16 interpretation of the element of severance of title to
17 exclusively mean a conveyance, and there's nothing that
18 says that that is the exclusive way a title is severed.
19 And we would ask the Court consider that grants of land
20 through adverse possession would be a severance by law,
21 and, similarly, severances in probate deeds of
22 distribution can be considered, so severances without
23 the traditional meaning of conveyance that the
24 defendants are relying on, and that a conclusion of law
25 should include a broader interpretation of what

1 severance of title means and not be so narrowly
2 construed as to conclude that a severance can only
3 happen by traditional conveyance.

4 THE COURT: That wasn't the conclusion. The
5 conclusion was not that it can only operate by way of a
6 conveyance. The conclusion was that there was no
7 severance.

8 MR. INGLESE: And in the Order, on the top
9 of page 5, it says there was no unity of title and
10 there was no severance. And I guess my question for
11 the Court would be: Is it your finding that there was
12 no unity of title despite the overwhelming evidence
13 that these parcels were all part of Mr. Thomas
14 Jackson's 10 acres going back to 1923?

15 THE COURT: That the -- the Order from the
16 2006 case did not operate as severance.

17 MR. INGLESE: I understand that, that that's
18 your Order. And on the top of page 5 of your Order, it
19 says, The Final Order did not operate as a severance,
20 and the next sentence says, There was no unity of
21 title. Is it this Court's conclusion that there was no
22 unity of title in this case?

23 THE COURT: That's the conclusion, yes, at
24 that point in time as a result of that activity, as a
25 result of that Order, the severance, if any, was the

1 1935.

2 MR. INGLESE: There was unity of title at
3 some point between the two parcels.

4 THE COURT: In 1935, right?

5 MR. INGLESE: That's what the Order is
6 saying, but that sentence says there was no unity of
7 title, which to me infers there was never any unity of
8 title between the two parcels, which prior to 1935 --

9 THE COURT: I was reading -- reading the
10 language as in referring to the Order from 2008. I
11 understand your position.

12 MR. INGLESE: Thank you.

13 Also, similarly, and this goes to the
14 essence of our position as well, your Honor, is that it
15 seems that there is a conclusion of law stating that an
16 easement by necessity can only arise in favor of the
17 grantee, but I'm not sure what law is being relied on
18 for that because we provided and put emphasis on the
19 Poole v. Edwards case, which states a scenario where a
20 grantor conveys all the property around them and leaves
21 themselves landlocked.

22 THE COURT: I didn't see the denial of
23 easement by necessity as hinging upon whether it was
24 the grantor or grantee but just as to the remaining
25 elements, so I'm not -- I'm not sure if that was the

1 definitive reason. The denial didn't result from that
2 aspect of it. It was from the failure of proof on the
3 other aspects, on the other elements.

4 MR. INGLESE: So it's we failed to prove
5 unity of title, we failed to prove severance of title,
6 and we failed to prove necessity? Did we fail on all
7 three?

8 THE COURT: I'd have to -- I'd have to
9 further review the Order. At least on the necessity at
10 the time of the severance, which goes back to the 1935,
11 I think, was the conclusion.

12 MR. INGLESE: I'm sorry, your Honor. I
13 didn't understand what you said.

14 THE COURT: The elements have to -- have to
15 exist as of the time of the severance, which would be
16 1935. If there was no severance in '06 or '08 as a
17 result of the Order, the only severance that would have
18 taken place or could have taken place would have been
19 in 1935, and if there's no showing or evidence of a
20 necessity at that time, I believe that's -- that was
21 the result of the denial under that theory.

22 MR. INGLESE: And even in 1935, prior to
23 that severance, these parcels were part of the same
24 parcel, and at the time of the severance in 1935, this
25 property, my client's property, became landlocked at

1 that time. Assuming that everything else in the Order
2 is perfect and --

3 THE COURT: There wasn't any proof that
4 there wasn't any access or other access at that time.
5 I mean, there could have been other access available
6 from any of the four directions. I mean, on paper, it
7 may appear that way with what limited information was
8 available, but I didn't -- I don't know that there was
9 any -- any proof.

10 MR. INGLESE: There was because the property
11 south wasn't part of this. There was no unity to the
12 south. The east and the west had been previously
13 conveyed, so you couldn't get to it from the east or
14 the west prior to 1935. So in 1935, if that's the date
15 of severance, that's also the date that this property,
16 my client's property, became landlocked and
17 inaccessible.

18 THE COURT: Wouldn't there have to be
19 testimony or evidence presented contemporaneous to the
20 severance in 1935 to show that, not just on paper, not
21 just as a result of the either surveys or the -- or the
22 deeds, that there was no other means or agreements,
23 written or unwritten, from the adjoining neighbors?
24 Are you saying that the proof of it is just as a result
25 of the records and that's all that's necessary?

1 MR. INGLESE: I think the necessity is
2 axiomatic on paper; however, the defendants' own
3 testimony would support a conclusion that there was
4 access, as they testified to the brothers jointly
5 working the land for decades after 1935, so --

6 THE COURT: But none of that is
7 contemporaneous to the -- to the severance or that time
8 frame. I mean, it's all after the fact. We're dealing
9 with a long time frame. And that -- that was my
10 thinking. I may very well be incorrect, and I need to
11 review that aspect more carefully, apparently. I think
12 I understand.

13 MR. INGLESE: I think there's plenty of
14 circumstantial evidence and public records and the
15 testimony that absolutely this Court can infer, just
16 looking on paper and listening to the parties, and the
17 necessity, if -- if 1935 is the severance, the
18 necessity would have been created at that time;
19 however, a permissive joint access agreement, as
20 implied and easily inferred from the testimony, would
21 have given access by prescription or something, but at
22 some point that -- that also ended.

23 THE COURT: Well, then it wouldn't have been
24 necessity if they had some joint use or joint
25 agreement. Then you're kind of -- aren't you then

1 shifting over into some sort of prescription argument?

2 MR. INGLESE: There's not enough evidence
3 for a prescriptive easement. It doesn't exist. And
4 even if it did, it clearly ended at some point. We
5 don't know if it did. So our position would be the
6 necessity was created in 1935, and whatever agreement
7 they had didn't rise to the level of prescriptive
8 easement. The necessity always existed to access this
9 property. I mean, it really doesn't -- it ultimately
10 doesn't matter because the necessity -- I'm not sure
11 that the necessity has to be contemporaneous if it's --
12 if the necessity existed and then later an easement was
13 created and then later that easement was abandoned, the
14 necessity would be recreated by that scenario. There
15 would still be a remedy available through the theory of
16 easement by necessity.

17 THE COURT: I guess -- Okay. I understand.
18 I understand. Thank you for clarifying.

19 MR. INGLESE: Thank you, your Honor.

20 THE COURT: I understand the argument.

21 MR. INGLESE: Yes, sir, I understand.

22 Paragraph 9 of our motion continues this
23 argument, and I won't beat a dead horse, your Honor,
24 but has some good discussion of the issue of severance
25 as well as the other elements of easement by necessity,

1 so I'll let the motion stand there because this
2 essentially further delves into the severance issue and
3 the alternative arguments that were presented.

4 Number 10 asks the Court reconsider the
5 conclusion of law in the fourth full paragraph on page
6 5. This is -- Mr. Watts made some arguments about the
7 accuracy of the amount of land conveyed in the old
8 deeds, and he relied on Klapman v. Hook, and I just
9 want to point out to the Court -- I don't know how much
10 this weighed in the Court's decision, but the context
11 of that case is comparing deeds and surveys, and so in
12 that case, in the Klapman case, the Court had the
13 benefit of a survey, and the survey and the deed
14 conflicted, and the Court said, We're going to look to
15 the survey. But our case is not that case. We don't
16 have a survey. We only have the deed and the language
17 of the deed. And you heard from the expert on the
18 ability of people to accurately describe, and in these
19 deeds during the time of the deeds' writing, and that
20 there shouldn't be, you know, such a big error as far
21 as an acre of unaccounted for land. So when the Court
22 concludes that -- you know, if there's other available
23 means, like a survey, then that's going to be better,
24 but it's not a -- it's not an inflexible rule, and, in
25 fact, the Court says that the vital question in

Page 22

1 determining the amount of land conveyed is looking to
2 the intent of the grantor, and if you can determine the
3 intent of the grantor from the testimony presented and
4 the deeds and the wills that are on file and in the
5 public record, then we would -- we would suggest that
6 the intent of the grantor was to deed my client more
7 than two acres because it included the residual lands
8 and it included the language of "plus or minus," while,
9 contrary to that, the defendants' deed explicitly
10 stated three acres, and we know that one acre was
11 deeded out, leaving them with two, but by virtue of
12 Judge Watson's Order, they now have three acres that
13 were subdivided between the defendants.

14 And finally, your Honor, regarding
15 res judicata, we don't think it's applicable here.
16 Again, the elements of res judicata require that the
17 subject matter have been adjudicated, subject matters,
18 and subject matter is synonymous in the case law with
19 causes of action or claims, and we would submit to the
20 Court that the subject matter of ownership, which was
21 litigated in 2008, is not the same subject matter and
22 is not the same cause of action as access by easement
23 and easement by necessity. They're different subjects.
24 And my client's claim didn't even exist in 2006 because
25 she always believed she was the owner of the property,

Page 24

1 so that each party gets its fair share." That's an
2 alternative argument to ownership. But the subject
3 matter of access is not the same subject matter; it's
4 not ripe for litigation when ownership is still cloudy.
5 And in our view, it wasn't cloudy at the time. We were
6 just going through a formality to get it titled in my
7 client's name. But that wasn't the case. We lost
8 that. But my client is certainly entitled to come back
9 to a court of equity and ask for access. It's a
10 different cause of action, different claim, and, again,
11 it didn't arise until Judge Watson gave his Order. And
12 we provided Judge Watson's statement from our summary
13 judgment where he said, This subject matter was not
14 before me and was not adjudicated, and it wasn't in the
15 complaint; it wasn't pled. He states very clearly in
16 that transcript from summary judgment that he didn't
17 hear this subject matter of access, and so --

18 THE COURT: Because it wasn't raised.

19 MR. INGLESE: It wasn't raised, and it
20 wasn't ripe, it wasn't ripe to be raised. It could
21 have been dismissed for failure to state a claim for
22 which relief could be granted, because if you own the
23 property, you have access to it, which is where my
24 client's position was. And the Court -- there's
25 nothing in the res judicata juris prudence that says

Page 23

1 and it would not have been right to bring that. It's
2 kind of like filing a divorce for a one-year separation
3 when you haven't been separated for one year. The
4 cause of action isn't ripe yet, it's not available.
5 And so that subject matter was not litigated and,
6 therefore, res judicata should not be relied on.

7 THE COURT: It certainly could have been.
8 It could have been pled in the alternative: "I'm the
9 owner. If I'm not the owner, I need access."

10 MR. INGLESE: I think it could have been --
11 If I was defending that cause of action, I would have
12 filed a 12(b) motion to dismiss for failure to state a
13 claim because the ownership question was dispositive of
14 the ability to even make that claim. It wasn't ripe.
15 And you can't -- causes of action can't be made
16 contingent on some future action. That's the doctrine
17 of ripeness.

18 THE COURT: So you're saying you can't plead
19 in the alternative?

20 MR. INGLESE: I'm not saying you can't plead
21 in the alternative. An alternative argument under
22 ownership would be, "I own the property and I'm making
23 this claim that I own the property. In the
24 alternative, if you find that I don't own the property,
25 we would argue that you should partition this property

Page 25

1 you can't come back for a different subject matter,
2 especially if it arises out of a court order or some
3 subsequent action that happens. And ripeness is the
4 doctrine that we can't make claims based on some
5 contingent future condition, and in this case, she
6 couldn't make a claim for access based on a contingency
7 that a court might find in the defendants' favor in
8 2008.

9 THE COURT: All right.

10 MR. INGLESE: Thank you, your Honor.

11 THE COURT: All right. Thank you.

12 Mr. Watts.

13 MR. WATTS: Your Honor, I'm going to be
14 speaking to a couple of Court of Appeals opinions, so
15 if it please the Court, I'd like to hand up those cases
16 for the Court to refer to. There you go.

17 THE COURT: Thank you, sir.

18 MR. WATTS: Now, here is why the 1935 deed
19 from Thomas Jackson to Rubin Jackson does not entitle
20 the plaintiff to an easement by necessity.

21 Mr. Inglese relies on the case of Poole v.
22 Edwards for a couple of sentences to support his
23 position, but I don't like Poole v. Edwards. The
24 sentences that he uses, Mr. Inglese uses, is a little
25 sketchy, and there's a couple of ellipses in there

1 indicating some things are missing. So I would prefer
2 to rely upon Brasington v. Williams. Brasington v.
3 Williams goes into quite an indepth examination of
4 easements by necessity leading up to the consideration
5 of the facts before the jury in that case, and, lo and
6 behold, it -- it does recognize a situation where a
7 grantor could reserve an easement by necessity by
8 implication in addition to by grant. Page 6 of the
9 Order, it says, "or it may arise from an express or
10 implied reservation in favor of the grantor over the
11 land of the grantee."

12 On page 7, it talks about -- he says that --
13 Let's see. There's a phrase, "reserving easement
14 either expressly or under circumstances which implied a
15 reservation." And further down, it says, "It seems to
16 be less difficult for the grantee of the portion sold
17 to establish the easement than the grantor for the
18 reason that the grantor ought not to be allowed to
19 derogate from his absolute deed by claiming rights and
20 burdens over the lands sold in the face of his
21 covenants of warranty, even though said burden might
22 have been apparent and continuous at the time."

23 Then, finally, on page 10 of the Order, it
24 gets down to specifics, the specific circumstances
25 whereby a grantor might impliedly reserve an easement

1 of access by necessity. "If, on the other hand, the
2 quasi-servient tenement is granted while the
3 quasi-dominant tenement is retained, no easement is
4 reserved by implication unless it is strictly necessary
5 to the enjoyment of the property retained." So there
6 is the -- there's the condition.

7 A grantor can grant out the exterior
8 property, but it will not -- that grant alone will not
9 necessarily give him an easement by necessity, easement
10 of access by necessity. There's got to be more because
11 the courts and the law want to preserve the general
12 warranty of the deed to the grantee.

13 So we need a great deal more evidence or
14 circumstances to grant that easement by implication
15 strictly necessary to the enjoyment of the property
16 retained, and that's where the plaintiff here failed,
17 provided no evidence to indicate that strict necessity.
18 Plenty of evidence from the defendant that the
19 surrounding land was flat, high, no mountains, no
20 rivers or anything. Geographically, Plaintiff is --
21 quite possibly could get access through neighboring
22 property, neighboring property owned by strangers.

23 So, yes, the 1935 deed to Rubin left
24 Plaintiff's property landlocked. We all agree to that.
25 But that in and of itself is inadequate to give or

1 reserve an easement by necessity over Rubin Jackson's
2 property. There must be extraordinary circumstances.
3 Plaintiff provided no evidence of such extraordinary
4 circumstances, mainly because all of this happened over
5 70 years ago, and there's -- there's nothing that she
6 can rely on.

7 We have no idea why Mr. Thomas Jackson did
8 what he did, and we have no idea what sort of agreement
9 he might have had with Rubin Jackson, no idea what sort
10 of agreement Thomas may have had with folks to the
11 south or to the east or to the west.

12 Brasington case, the facts of the Brasington
13 case kind of point out, I think, or illustrate the
14 level of strict necessity that the Court is
15 contemplating. That involved Belmont Plantation and
16 Mulberry Plantation in Kershaw County, a few miles
17 south of Camden. General Chesnut owned both of those
18 plantations at one time, and he sold Belmont Plantation
19 first and reserved Mulberry Plantation. Belmont
20 Plantation was the interior property. Mulberry was the
21 exterior property with frontage on the Charleston
22 highway. So the actual circumstances of Brasington and
23 Williams is -- fits perfectly within the general
24 concept of easement by necessity, where the grantee is
25 entitled to access across grantor's exterior property.

1 But the Court took that opportunity to, as I said, go
2 into an extremely detailed exposition of easements by
3 necessity.

4 The extreme circumstances in the Brasington
5 case is the fact that the interior property, the
6 Belmont Plantation, was surrounded on three sides by a
7 600-foot wide oxbow of the Wateree River. There was
8 absolutely no way that the folks owning Belmont could
9 go anywhere except across Mulberry Plantation to get to
10 the Charleston highway.

11 Now, here is why Judge Watson's 2008 Order
12 did not operate as a severance. There are the -- the
13 obvious mechanical reasons. It wasn't witnessed by two
14 people. There are no words of grant, bargain and sale.
15 There's no express language in there saying that, "I'm
16 taking property away from Plaintiff and giving it to
17 Defendant." There's no description of any property
18 being taken away or granted to the defendants.

19 If you look at the plaintiff's legal
20 description of her property, it has not changed. It
21 was the same when she took title to the property. It
22 was the same when she commenced the 2006 case. It
23 didn't change by virtue of Judge Watson's Order. It
24 remains the same today in this case.

25 All these easement cases that we've been

Page 30

1 talking about based on the law of easement by
2 necessity, they all involve actual physical
3 subdivisions of land, and that just hasn't happened in
4 the case of Ms. Mills's property.

5 Plaintiff brought the 2006 case claiming
6 title to property that she believed she owned. She
7 brought the suit in 2006 to get a judge to confirm that
8 belief. The judge said, No, you don't own the property
9 after all.

10 So the only -- the order -- Judge Watson's
11 Order doesn't really operate as a severance so much as
12 just bringing together the plaintiff's belief and
13 reality.

14 Now, I made Plaintiff's expert go into a
15 great deal of testimony and evidence about the problems
16 with the 1935 deed to Rubin. But a person cannot
17 acquire title to land based on the defects of another
18 person's title. *Hoogenboom v. City of Beaufort*. "In
19 an action to quiet title, the plaintiff must recover on
20 the strength of his own title, not on the alleged
21 weakness of the defendant's title." That refers --
22 that recites *Haithcock v. Haithcock* from 1923.

23 So, if we agree that the 1935 deed -- we
24 have no evidence about the circumstances of the 1935
25 deed to -- to be able to imply an easement in favor of

Page 32

1 v. Edwards, Brasington being 1924 and Edwards being
2 1941. But Edwards doesn't go into this strict --
3 strictly necessary language, so this case demonstrates
4 the strict necessity that's created by the out
5 conveyances landlocking this property.

6 A landlocked piece of property on its face
7 demonstrates a strict necessity for an easement to be
8 able to enjoy the land. And so I don't necessarily
9 dispute Mr. Watts's reading of *Brasington* except to the
10 extent that Poole overrides that. But if he's right
11 and strict necessary to the enjoyment of the property
12 obtained is what's required to be shown, it's, on its
13 face, what we're dealing with here.

14 And I'll just say, your Honor, that I think
15 you have acknowledged the difficulty in presenting
16 evidence from the intention of people who are no longer
17 with us, going back to 1935, but that's exactly why
18 courts of equity exist, is to take all the information
19 that is available and come up with a fair solution so
20 that the enjoyment of the land can be realized by my
21 client and by anybody else that needs this Court's
22 powers to access their property.

23 Judge Watson's Order actually does have
24 language -- and I'll find it here, your Honor. It's
25 actually -- Judge Watson found and concluded on two

Page 31

1 the grantor, and we agree that Judge Watson's Order of
2 2008 served as no kind of severance whatsoever, more of
3 a blending of Plaintiff's imagination and reality, then
4 all of these other things that Mr. Inglese has talked
5 about really go by the boards. They're not -- they
6 don't become that important.

7 As far as the res judicata -- his res
8 judicata argument, yes, Judge Watson said that the
9 access issue was not raised in the 2006 case, but, as
10 your Honor pointed out, it should have been raised.
11 Plenty of evidence that she was contemplating an
12 easement. Plenty of evidence that she wanted access.
13 So she was seeking title to the property or a
14 confirmation of title to the property so that she could
15 have access to Highway 17A. So she should have pled
16 both in the alternative.

17 Thank you.

18 THE COURT: All right. Thank you.

19 Mr. Inglese, I don't want to spend too much
20 time going back and forth, but in response to any
21 arguments or the cases raised by Mr. Watts, any
22 additional comments?

23 MR. INGLESE: Yes, your Honor. I'll be
24 brief.

25 The *Brasington* case is superseded by Poole

Page 33

1 grounds, one being that the land in dispute where we've
2 been asking for this easement was always the land of
3 Mr. Jackson, but he also found explicitly, even if that
4 wasn't the case, "The Court finds that even absent the
5 chain of title examined, the lands in question would
6 still belong to Defendants by virtue of continuous
7 hostile, open, adverse, notorious and exclusive use,"
8 et cetera, et cetera, consistent with an order of
9 adverse possession. The judge is granting the
10 defendants this land. And so we -- our position is
11 maintained that the 2008 is a severance. But, again,
12 regardless, the elements of unity of title is clear.
13 We had expert testimony. We had a map that showed the
14 10 acres, and we had a lot of talk about the sequence
15 of severances. Unity of title shouldn't be an issue.
16 Severance of title, whether it was 1935 or 2008, this
17 Court has found it's 1935. Assuming, arguendo, that
18 that's the date of severance, then still severance of
19 title elements of easement by necessity is met. It was
20 met in 1935. Fine.

21 And then the last element is necessity. A
22 landlocked property on its face is strictly necessary
23 for that landlocked property to gain access.

24 And in conclusion, your Honor, nobody
25 else -- nobody to the south was ever part of the same

1 title, so there was no unity of title to the south.
2 There's no legal obligation for those folks to grant
3 access. The property to the east was the first one
4 that Thomas Jackson conveyed out. That cut off this
5 property from any access to the east from a little dirt
6 road that goes that way. That's out of the picture in,
7 like, 1926 or '27, I believe. And then later, I
8 believe -- I don't remember the exact date, but 1932
9 the property to the west was conveyed out. That cut
10 off direct access for this property to 17A. And then
11 in 1935, if your conclusion is correct, then in 1935
12 this property became landlocked and with no access to a
13 road. And so it doesn't matter much if it's '35, 1935,
14 or 2008. The necessity was created at that severance.
15 And the other two issues, the other two elements, unity
16 of title, not disputed; severance of title, the only
17 dispute is whether it was '35 or 2008, and if it's
18 1935, then, fine; that's when the necessity was
19 created. There's no evidence from the expert or the
20 public records of any agreement to access. There's no
21 easement. It's documented. And the doctrine of
22 easement by necessity doesn't require a showing of an
23 intent to reserve access. That's not required. The
24 law doesn't say that we have to come to you and say it
25 was Mr. Jackson -- Thomas Jackson's intent 80 years ago

1 to reserve access. That's not required of us. We just
2 have to show unity of title, which was definitely very
3 well demonstrated; the severance in 1935, okay, we'll
4 accept that for the purpose of this hearing; and the
5 necessity, which is created by virtue of the landlocked
6 piece of property. And the equitable powers of this
7 Court are available to create the usable -- reasonable
8 use of this land, which right now has continued to be
9 denied to my client. And we just throw ourselves at
10 the mercy of the Court at this point because we feel
11 like we've demonstrated those elements, and we've
12 sufficiently removed the res judicata argument as well.

13 THE COURT: Thank you.

14 Mr. Watts, anything in conclusion?

15 MR. WATTS: Equity follows the law, your
16 Honor, and I think Brasington gives a very good
17 explanation of the law surrounding this kind of
18 circumstance. The law will recognize a piece of
19 property can become landlocked and not have access, is
20 not entitled to access. Only under specific or
21 strictly necessary circumstances will the law imply an
22 access easement by necessity in favor of a grantor that
23 landlocks himself.

24 That's -- that's all, your Honor. Thanks.

25 THE COURT: All right. Thank you,

1 gentlemen. I certainly appreciate it. I've had an
2 opportunity, of course, to look at everything before
3 today. And I appreciate you-all enlightening me with
4 the arguments, explanation and responses to the
5 questions and so forth. I appreciate that. I
6 appreciate you-all providing the case law as well.

7 I'm going to take the matter under
8 advisement. I will contact you-all by e-mail as to my
9 position either with instructions for an order or
10 request for further clarification or further
11 instructions.

12 Thank you all very much.

13 MR. INGLESE: Thank you.

14 MR. WATTS: Thank you for your time and
15 consideration, your Honor.

16 (The proceedings concluded at 10:34 a.m.)
17
18
19
20
21
22
23
24
25

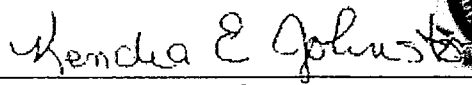
C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing proceedings, and that the transcript is a true record of such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 17th day of October, 2015, in the City of Charleston, County of Charleston, State of South Carolina.


Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022



CHARLES MICHAEL FEELEY
ATTORNEY AT LAW
792 FOLLY ROAD, SUITE 5
CHARLESTON, SOUTH CAROLINA 29412
TELEPHONE: (843) 795-3727
FAX: (843) 795-0668

EDUCATION: **University of South Carolina School of Law**
Columbia, South Carolina
Doctor of Jurisprudence, May 2002

College of Charleston
Charleston, South Carolina
Bachelor of Science in Economics, July 1999

EXPERIENCE: **Private Practice, Charles Michael Feeley - Attorney at Law**
April 2004 to present

- General practice of law, with emphasis on real estate/title law, probate law, and real estate litigation, including:
 - Quiet Title Actions, trial and appellate experience:
Heirs Property Issues, Tax Sale Confirmations, Adverse Possession, Easements, Wetlands Issues
 - Probate Estates: Administration and Litigation
 - Title examinations:
 - Delinquent Tax Title Research for Charleston County, from 2006 thru present
 - Right-of-Way Title Research: Numerous Projects for Charleston County, Dillon County, Florence County, and Richland County, from 2009 to present
 - Complex Title Issues: Title Examinations and Consultations
 - Approximately 6,000 title examinations personally conducted over career / 20 years' experience

Associate Attorney, Forquer, Green & Lattimore, LLC
December 2002 to April 2004

- General real estate practice, including residential and commercial loan closings, development issues, and title examinations

Law Clerk, Feeley Law Firm (Charles Edward Feeley, Esq.)
July 1992 to April 2002

- Law clerk for small, neighborhood practice
 - Performed legal research, assisted with the preparation of deeds and real estate closings packages, probate estate filings, and bankruptcy filings
 - Apprenticed/conducted title examinations state-wide



REFERENCES

Dan Gregory
Charleston County Delinquent Collector
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4570

Joseph Dawson, Esq.
Charleston County Attorney
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-1850

Keena Edwards
EDRUSH Consulting and Development Group, LLC
3255 Landmark Drive, Suite 214
North Charleston, South Carolina 29418
(704) 281-5614

William H. Sloan, Esq.
Sloan Law Firm, PA
1055 North Main Street
Summerville, South Carolina 29483
(843) 873-7531
(former managing attorney, Forquer, Green & Lattimore, LLC)

THE STATE OF SOUTH CAROLINA,

KNOW ALL MEN BY THESE PRESENTS, That *J. D. E. Hill of North Charleston,*

In the State aforesaid.

Give (5) Dollars and other valuable considerations In consideration of the sum of Dollars, to *Me* in hand paid at and before the sealing of these presents by *Thomas Jackson of Charleston*

In the State aforesaid.

(the receipt whereof is hereby acknowledged), have Granted, Bargained, Sold and Released, and by these presents do Grant, Bargain, Sell and Release, unto the said

Thomas Jackson, All that flat of land shown as lot no 11 of J. D. E. Hill 317 (see first, between 10 1/10 (ten and three tenths) acre more or less as shown on a plat of survey of land first made by M. J. J. J. and 'check' in Nov. 1918 which said plat is rec'd in R. M. C. Office Berkeley County, S. C., in Book page - Reference to which is hereby made. Said tract no. 11 being bounded and described as follows to wit: - On the North by lot no. 12 as shown on map above referred to on East by the Public Road leading to Ridley on South by lot no. 10 as shown on map above referred to and on West by Summerville Public Road

TOGETHER WITH, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises mentioned unto the said Thomas Jackson, his heirs and assigns forever.

AND I do hereby bind Myself ^{and my} heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Thomas Jackson, his heirs and assigns, against THE and My heirs and all whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS My hand and seal, this 20th day of Jan, in the year of our Lord one thousand nine hundred and twenty three and in the one hundred and forty seventh year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of
Harry H. Pinckney B.E. Will
J. H. Pinckney (L. S.) (L. S.)

THE STATE OF SOUTH CAROLINA,
Charleston County of Berkeley.

PERSONALLY appeared before me J. H. Pinckney and made oath that he saw the within named B.E. Will sign, seal, and as his act and deed, deliver the within written Deed; and that he with Harry H. Pinckney

witnessed the execution thereof.
SWORN to before me, this 20th day of Jan, A. D. 1923
(L. S.) Sam Pinckney
Notary Public for S.C.

THE STATE OF SOUTH CAROLINA,
Charleston County of Berkeley.

I, Sam Pinckney a Notary Public, S.C.

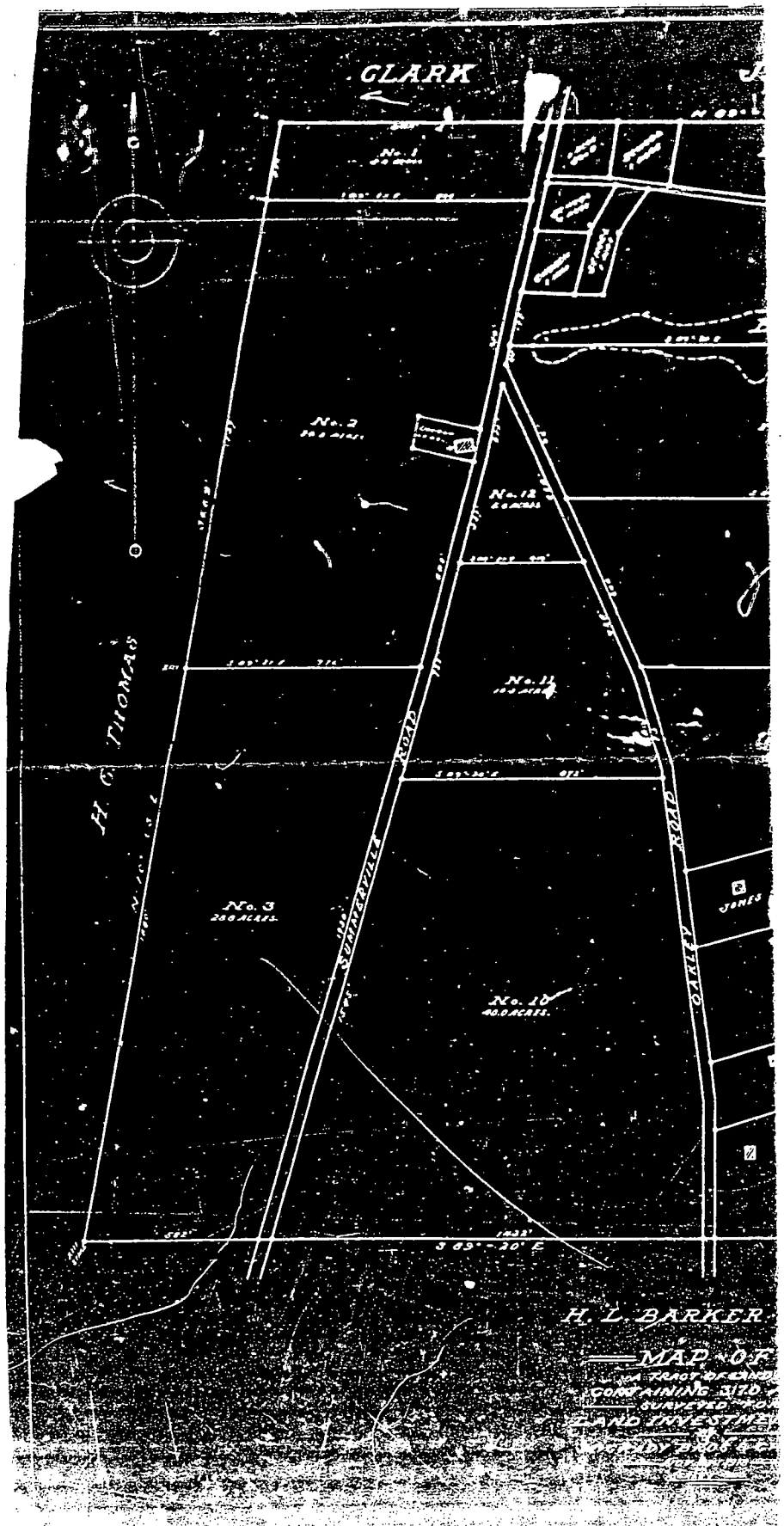
RENUNCIATION OF DOWER.

do hereby certify unto all whom it may concern, that Mrs. Emma Will wife of the within named B.E. Will did this day appear before me, and, upon being privately and separately examined by me, did declare that she does fully, voluntarily and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release and forever relinquish unto the within named Thomas Jackson, his heirs and assigns, all her interest and estate, and also all her right and claim of Dower in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal, this 20th day of January, Anno Domini 1923
(L. S.) Sam Pinckney Emma Will
Notary Public for S.C. (L. S.)

Recorded this 27 day of Jan, 1923

3



THE STATE OF SOUTH CAROLINA,

Lucy, (Prinny)

KNOW ALL MEN BY THESE PRESENTS, That

I, Tom Iversen

in the State aforesaid

...in consideration of the sum of

Twenty and 100

Dollars.

to me, in hand paid at and before the sealing of these presents by

Edward Clark

in the State aforesaid

..(the receipt whereof is hereby

acknowledged, have Granted, Bargained, Sold and Released, and by these presents Grant, Bargain, Sell and Release, unto the said

Edward Burns, - has been and always

All that certain facts, fixed & that a land estate lying, and being an school district No. 11, etc., and, finally, regarding measuring and containing the same, calling and bounding as follows: On the North by lands of John Jackson, and to the

On the North by Lander's & then Jackson
for the East by Embury Rock from Oakley road to Summit
Road

On the north by bridge & sign ^{the same}
for the east by timber road from Oakley road to Summit.

W. Bond

On the South by Chas. A. Jones

On the west left bank of Long Johnson -

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Edward Clarke, his heirs and assigns forever.

AND I do hereby bind Myself and My heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Edward Clarke, his

heirs and assigns, against me and My heirs and all others lawfully claiming or to claim the same, or any part thereof.

WITNESS My hand and seal, this third day of May, in the year of our Lord one thousand nine hundred and (21) thirty two and in the one hundred and fifty eighth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

J. M. Burbage
M. J. Wille

Tom Jackson (L. S.)
My (L. S.)

THE STATE OF SOUTH CAROLINA,

Charley County of Berkley,

PERSONALLY appeared before me J. M. Burbage and made oath that he saw the within named Tom Jackson sign, seal, and as his act and deed, deliver the within written Deed; and that he with M. J. Wille

witnessed the execution thereof.

SWORN to before me, this Eighth day of May, A. D. 1931 (L. S.)
M. J. Wille (Seal)
Edw. Clarke for (M)

J. M. Burbage -

THE STATE OF SOUTH CAROLINA,

Charley County of Berkley,

J. M. Wille

RENUNCIATION OF DOWER.

do hereby certify unto all whom it may concern, that Mrs. Edie Jackson the wife of the within named Tom Jackson did this day appear before me, and, upon being privately and separately examined by me, did declare that she does fully, voluntarily and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release and forever relinquish unto the within named Edward Clarke, his heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal, this Eighth day of May, Anno Domini 1931
M. J. Wille (Seal)
Edie Jackson (Seal)
Edw. Clarke

THE STATE OF SOUTH CAROLINA,

Signatures: *None* Attached
 State Stamps: *None* Attached

KNOW ALL MEN BY THESE PRESENTS, That

I, Tom Jackson, former

in the State aforesaid,

in consideration of the sum of

Thirty

Dollars,

to *Me* in hand paid at and before the sealing of these presents by*J. W. Adkins*

in the State aforesaid,

(the receipt whereof is hereby

acknowledged) have Granted, Bargained, Sold and Released, and by these presents do Grant, Bargain, Sell and Release, unto the said

J. W. Adkins

All That Piece, parcel or tract of Land situated lying and being in the
 Parish of St. John, Parish of County State of Louisiana, measuring and
 containing One & three quarters (1 3/4) acres, be the same more or less
 Butting and bounding North and East on lands of Tom Jackson, South
 on lands of C. A. Jones, West on the public road known as the
 Sumnerville Road, said tract measuring three hundred feet on the
 North and South

5

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any-wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said.....

J. W. Robinson, his heirs and assigns forever.

AND *I* do hereby bind *Myself & My* heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said *J. W. Robinson, his*

heirs and assigns, against *me* and *my* heirs *ed any person* lawfully claiming or to claim the same, or any part thereof.

WITNESS *My* hand and seal, this *thirtieth* day of *November*, in the year of our Lord one thousand nine hundred and *thirty four* and in the one hundred and *fift y eighth* year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

M. J. Tipton
Eva Clark

Tom J. Jackson (L. S.)
Miss (L. S.)

THE STATE OF SOUTH CAROLINA,

Berkeley County of *Berkeley*

PERSONALLY appeared before me *Eva Clark* and made oath that *she* saw the within named *Tom Jackson* sign, seal, and *in his* act and deed, deliver the within written Deed; and that *she* with

witnessed the execution thereof.

SWORN to before me, this *20th*

day of *November*, A. D. 19*34*

(L. S.) *M. J. Tipton*
Notary Public for S.C.

THE STATE OF SOUTH CAROLINA,

Berkeley County of *Berkeley*

do hereby certify unto all whom it may concern, that Mrs. *Eva Jackson* the wife of the within named *Tom Jackson* did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, threat or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named *J. W. Robinson, his* heirs and assigns, all her interest and estate, and also all her right and claim of Dower, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal, this *thirtieth* day of *November*, Anno Domini 19*34*

(L. S.) *M. J. Tipton* (Seal) *Tom J. Jackson* (L. S.)

Recorded this *2nd* day of *Dec*, 19*34*, at *9* o'clock, *P-M*.

4-6-0

THE STATE OF SOUTH CAROLINA,

STATE OF SOUTH CAROLINA
COUNTY OF *BERKLEY*
FILE NO. *100*

KNOW ALL MEN BY THESE PRESENTS, That *J. Thomas Jackson*

in the State aforesaid, in consideration of the sum of
Five and no/100 Dollars,
to *me* in hand paid at and before the sealing of these presents by *J. Thomas Jackson*

In the State aforesaid, (the receipt whereof is hereby acknowledged) have Granted, Bargained, Sold and Released, and by these presents do Grant, Bargain, Sell and Release, unto the said

Ed. Jackson, his heirs and assigns:
All that certain piece of land or tract of land situated lying and being in County of Berkley aforesaid, measuring and containing Three (3) acres, and siting and bounding as follows to wit:
North by land of H. L. Bassel
East by land of " " " "
South by land of " " " "
West by land of John Clark

(Being part of the tract that I the said Thomas Jackson purchased from S. E. Hill as shown by record in Book 51 page 127 P. M. C. office for Berkley County, S. C.)

C

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any-wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said.....

Ted Jackson, his

heirs and assigns forever.

AND *I* do hereby bind *Myself and my* heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said *Ted Jackson, his* heirs and assigns, against *me* and *my* heirs *and all others* lawfully claiming or to claim the same, or any part thereof.

WITNESS *My* hand and seal, this *21st* day of *Sept* in the year of our Lord one thousand nine hundred and *25* and in the one hundred and *25th* year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

J. O. Edwards
John O. Edwards

Thomas Jackson (L. S.)
made (L. S.)

THE STATE OF SOUTH CAROLINA,

Charleston County of *Charleston*

PERSONALLY appeared before me *J. O. Edwards*

and made oath that *he* saw the within named *Thomas Jackson* sign, seal, and as *his* act and deed, deliver the within written Deed; and that *he* with *J. O. Edwards* witnessed the execution thereof.

SWORN to before me, this *21st* day of *Sept* A. D. 19*25*
J. O. Edwards (L. S.)
J. O. Edwards

John O. Edwards

THE STATE OF SOUTH CAROLINA,

RENUNCIATION OF DOWER

Charleston County of *Charleston*

J. O. Edwards N. P. S. C.

do hereby certify unto all whom it may concern, that Mrs. *Ellie Jackson* the wife of the within named *Thomas Jackson* did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release and forever relinquish unto the within named *Ted Jackson his* heirs and assigns, all her interest and estate, and also all her right and claim of Dower, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal, this *21st* day of *Sept* Anno Domini 19*25*
J. O. Edwards (L. S.)
J. O. Edwards

Recorded this *21st* day of *Sept* 19*25* at *Charleston* S. C.

2274

TITLE TO REAL ESTATE—BOOK A11

A 60-274

7/21/35

THE STATE OF SOUTH CAROLINA,

Bamberg County

State Stamp \$ *2.00* Attached
 Local Stamp \$ *None* Attached

KNOW ALL MEN BY THESE PRESENTS, That *J. Thomas Jackson*

In the State aforesaid, *For and not for* — In consideration of the sum of *Five* Dollars, to *Me* in hand paid at and before the sealing of these presents by *John Jackson*

In the State aforesaid, (the receipt whereof is hereby acknowledged) have Granted, Bargained, Sold and Released, and by these presents do Grant, Bargain, Sell and Release, unto the said

John Jackson, his heirs and assigns.
 All that certain piece, parcel or tract of land situated, lying and being in the County and State aforesaid, measuring and containing *Three (3) acres*, and *Quarter and Quarter* of an acre, to-wit:

North by land of Fred Jackson.
East by " " of H. D. Baskin.
South by lands of Samuel Johnson.
West " " of Frank Mizell.

Being part of tract of land that I, the said Thomas Jackson purchased from J. S. Hill as shown by deed recorded in Book 16-57 at Page 227 R.M.C. Office for Bamberg County, S.C.

7A

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said _____

Reuben Jackson, his

heirs and assigns forever.

AND I do hereby bind _____ heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said _____

Myself and My
Reuben Jackson, his

heirs and assigns, against _____ and _____ heirs _____ and all others lawfully claiming or to claim the same, or any part thereof.

WITNESS _____ hand and seal, this _____ day of _____, in the year of our Lord one thousand nine hundred and _____ and in the one hundred and _____ year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

John O. Edwards
John O. Edwards

Thomas Jackson (L. S.)
Myself (L. S.)

THE STATE OF SOUTH CAROLINA,

Charleston County of _____

PERSONALLY appeared before me _____

and made oath that _____ saw the within named _____

sign, seal, and as _____ and deed, deliver the within written Deed; and that _____ with _____

witnessed the execution thereof.

SWORN to before me, this _____ day of _____, A. D. 19____

(L. S.)

John O. Edwards
John O. Edwards

THE STATE OF SOUTH CAROLINA,

RENUNCIATION OF DOWER

Charleston County of _____

Reuben Jackson _____
Myself _____

do hereby certify unto all whom it may concern, that _____ wife of the within named _____

did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release and forever relinquish unto the within named _____

_____ heirs and assigns, all her interest and estate, and also all her right and claim of Dower, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal, this _____ day of _____, Anno Domini 19____

(L. S.)

John O. Edwards (Seal)
Myself

Recorded this _____ day of _____, 19____ at _____ o'clock _____

State Stamp \$ — Attached
U. S. Stamp \$ — Attached

THE STATE OF SOUTH CAROLINA,

KNOW ALL MEN BY THESE PRESENTS, That J. Parker Jackson

of the State aforesaid South Carolina in consideration of the sum of

\$ 500 to him paid at and before the making of these presents by Harold Millman

of the State aforesaid South Carolina (the receipt whereof is hereby acknowledged), have Granted, Bargained, Sold and Released, and by these presents do Grant, Bargain, Sell and Release, unto the said

Harold Millman
All that piece or parcel of land situate, lying and being in the County of Charleston State of South Carolina more particularly described as follows, to-wit: one acre of land is bounded as follows: on the North by the lands of John Jackson, on the East by the lands of the State of South Carolina, on the South by the lands of the State of South Carolina, and on the West by the lands of the State of South Carolina.

7B

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said

Abelard Mullins, his

heirs and assigns forever.

AND

I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Abelard Mullins, his

heirs and assigns, against me and my heirs and all persons lawfully claiming or to claim the same, or any part thereof.

WITNESS my hand and seal, this 9 day of April, in the year of our Lord one thousand nine hundred and 41 and in the one hundred and sixty-fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Noah Duggers
Cecile Duggers

Ruben Jackson (L. S.)
Ruben Jackson (L. S.)

THE STATE OF SOUTH CAROLINA,

BENEFIT COUNTY.

PERSONALLY appeared before me

Cecile Duggers
and made oath that she saw the within named Ruben Jackson
sign, seal, and as his act and deed, deliver the within written Deed; and that she with Noah Duggers

witnessed the execution thereof.

SWORN to before me, this

9 day of April, A. D. 1941.
(L. S.) H. P. Duggers (and)
Notary Public, S. C.

Cecile Duggers

THE STATE OF SOUTH CAROLINA,

BENEFIT COUNTY.

RENUNCIATION OF DOWER.

I, H. P. Duggers, a Notary Public for South Carolina

do hereby certify unto all whom it may concern, that the Cecile Jackson, the wife of the within named Ruben Jackson did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whatsoever, renounce, release and forever relinquish unto the within named Abelard Mullins

all her laterent and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my hand and seal, this 9 day of April, 1941.

Anna Duggers 1941

1985

LAST WILL AND TESTAMENT

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE NAME OF GOD, AMEN:

I, RUBEN JACKSON, of the County of Berkeley, State of South Carolina, being of sound and disposing mind and memory and being desirous of making such disposition of the worldly goods of which I may die possessed as to me seems just and proper, do hereby Make, Publish, Ordain and Declare this as and for my LAST WILL AND TESTAMENT, hereby revoking all other Wills, Codicils or other instruments of a testamentary nature heretofore made by me.

ITEM I: I commit my soul to the gracious God who gave it and direct that my body be decently interred and that a suitable marker be erected over my grave.

ITEM II: I direct my personal representative or representatives hereinafter named to pay all my just debts and funeral expenses, including the cost of a marker for my grave, as soon as practicable after my demise, and to that end do I charge my whole estate, real and personal.

ITEM III: My home place, comprised of two (2) acres, with the dwelling thereon, situate on the East side of Highway 17-A South of Moncks Corner, in Berkeley County, South Carolina, do I Will and Devise unto my beloved wife, LURLINE JACKSON, for and during the full term of her natural life, and from and after the death of my said wife, or upon my demise should she predecease me, then do I Will and Devise the remainder interest therein to my children, MILDRED J. HUTSON and HENRY RUSSELL JACKSON, in the following shares, or proportions, that is to say: the northernmost portion or one-half, with the residence thereon, shall pass to and vest in my son, HENRY RUSSELL JACKSON, and the southernmost

1
RQ
RTH
JW
MKL

Witnessed by:
Book 14-5
Filed for Probate
Berkeley County, S.C.
August 10, 1985

158
7C

portion or one-half thereof shall pass to and vest in my daughter, MILDRED J. HUTSON. The properties shall be so divided as to allot each an equal frontage along the highway and the division line shall extend eastwardly from the highway and parallel to the North line to a point along the eastern boundary of the two acres adjoining Mullinax.

ITEM IV: All of the rest, residue and remainder of my properties and estate, real, personal and mixed, of whatsoever nature and kind and wheresoever situate, do I Will, Devise and Bequeath unto my beloved wife, LURLINE JACKSON, to her absolutely, and in the event my said wife should predecease me, or we should die simultaneously, or approximately so, in a common accident or calamity, or under circumstances causing doubt as to which of us survived the other, then do I Will, Devise and Bequeath my residuary properties and estate to my two children, MILDRED J. HUTSON and HENRY RUSSELL JACKSON, to them in equal shares, share and share alike.

ITEM V:: In the event one or the other of my children aforementioned should predecease me leaving no issue me surviving, then the share or interest of such predeceased child herein provided for shall pass to and vest in the survivor of my said children, and in the event either one or the other of my said children should predecease me leaving issue me surviving, then such issue shall take in equal shares, per stirpes, the share or portion of the deceased parent.

ITEM VI: I hereby Nominate, Constitute and Appoint my wife, LURLINE JACKSON, Executrix of this my LAST WILL AND TESTAMENT, and should she die, resign or for any reason fail to qualify and act as such, then do I Nominate, Constitute and Appoint my children, MILDRED J. HUTSON and HENRY RUSSELL JACKSON, Executrix and Executor to act in her place and stead. I direct

2
R &
B & H
J & W
M & L

that my personal representative or representatives shall serve without bond or other security for the faithful performance of her or their duties and hereby vest in said personal representative or representatives full power, authority and discretion to do all acts and things deemed by her or them necessary or convenient to the winding up of the affairs of my estate and a distribution hereunder.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 17th day of June A. D. 1976.

Ruben Jackson (I.S.)
RUBEN JACKSON

Signed, Sealed, Published and Declared by RUBEN JACKSON as and for his LAST WILL AND TESTAMENT in the presence of us, who in his presence and in the presence of each other, all present together at his request, have hereunto subscribed our names as witnesses:

Betty Lou Hanna Address Moncks Corner, S.C.
James H. Wilson Address Moncks Corner, S.C.
Margaret K. Law Address Moncks Corner, S.C.

3
RJ
B&H
J&W
M&L

State of South Carolina,

BERKELEY
COUNTY OF CHARLESTON.

IN THE PROBATE COURT

DEVISE/DESCENT OF REAL ESTATE
AND DESCRIPTION

Estate Classification: Testate-85ES08-01

BY: Ruben Jackson DECEASED OWNER--AS GRANTOR

[Each Devisee/Heir-At-Law, or group thereof, must be shown as to each particular parcel of realty. Use a separate bracket for each separate realty. Also show the type of fee (title) and the fractional shares of interest as the same may pertain.]

TO:

DEVISEE/HEIR-AT-LAW

—AS GRANTEE—

DESCRIPTION

Briefly include sufficient information to designate and locate real estate, such as number of acres or lots, lot numbers, name of subdivision, street address, city or parish, county, etc.

Lurline Jackson, wife
Route 4, Box 45
Moncks Corner, S.C. 29461

Life Estate

Mildred J. Hutson and Henry Russell Jackson

Tax Dist 6. 2 acres, located at
Route 4, Box 45, Moncks Corner,
South Carolina, 29461. with 3 Bldgs.
thereon.

Recorded This 13th Day of June, 19 86
Book 3 At Page 376
Judge Of Probate
Berkeley County, S. C.

FILED BY: Lurline Jackson

AS Executrix

OF THE SUBJECT ESTATE.

Date: January 3,

19 85

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF BERKELEY

KNOW ALL MEN BY THESE PRESENTS, that I, **MILDRED HUDSON**, for and in consideration of the sum of FIVE AND NO/100 (\$5.00) DOLLARS, and love and affection for my brother, in hand paid at and before the sealing of these presents by **HENRY RUSSELL JACKSON**, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said **HENRY RUSSELL JACKSON**, his heirs and assigns, my one-half undivided interest in and to the following described real property, to-wit:

All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situate, lying and being in 2nd St. Johns Parish, Berkeley County, South Carolina, **MEASURING AND CONTAINING 1.56 Acres**, more or less, and designated as **TRACT A** on plat hereinafter referred to, and having metes, bounds, courses, distances, content and delineations as are more fully shown on plat captioned "PLAT SHOWING LOT 1 & 2 BEING SUBDIVIDED INTO TRACT A (1.56 ACRE) AND TRACT B (1.55 ACRE) PROPERTY OF MILDRED HUTSON AND HENRY RUSSELL JACKSON, 2ND ST. JOHNS PARISH, BERKELEY COUNTY, SOUTH CAROLINA ", dated April 27, 2011, prepared by Cleatwood E. Droze, RLS No. 4550, and reference is hereby craved to said plat for a more complete and accurate description thereof. Said plat being recorded in the Office of Register of Deeds for Berkeley County, South Carolina, in Plat File Cabinet O, at Page 244-Q. TMS NO. Portion of 180-00-02-017.

Being a portion of the property acquired by grantor and grantee under the Will of Ruben Jackson, a/k/a Ruby Jackson, filed January 3, 1985, in Probate Roll No. 85-ES-08-01 which appears in the Office of the Probate Court for Berkeley County, South Carolina; also by Deed of Distribution recorded in Deed Book T-85, at Page 1 in the records for Berkeley County.

DEED DRAWN ---TITLE NOT EXAMINED

Return to:
Henry Russell Jackson
1905 Morgan Ave.
W Charleston SC 29406

TOGETHER with all and singular the Rights, Members Hereditaments and Appurtances to the Premises belonging, or in any way incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **HENRY RUSSELL JACKSON**, my one-half undivided interest, his heirs and assigns, forever.

AND I do hereby bind myself and my heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **HENRY RUSSELL JACKSON**, his heirs and assigns, against me and my heirs and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 20th day of May, in the year of our Lord two thousand eleven and in the two hundred thirty-fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Shelley R. Denton

James L. Delgado

Mildred Hudson
MILDRED HUDSON

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

PROBATE

PERSONALLY appeared before me Shelley Denton and
made oath that he saw the within named **MILDRED HUDSON**, sign, seal and
as his/her act and deed, deliver the within written instrument, and that (s)he with
Jesse L. [Signature] witnessed the execution thereof.

SWORN to before me this 20th

day of May, 2011

Shelley R. Denton

Jesse L. [Signature]
A NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: ~~My Commission Expires~~
July 20, 2019

STATE OF SOUTH CAROLINA

Greenville
COUNTY OF BERKELEY

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. Property being transferred does bear Berkeley County Tax Map No. A Portion of 180-00-02-017 and was transferred by MILDRED HUDSON to HENRY RUSSELL JACKSON, on _____, 2011.
3. Check one of the following: The deed is
 - (a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the deed recording as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ exempt from the deed recording fees because: No consideration was charged for the transaction (3)
4. Check one of the following if either item (3) or item 3(b) above have been checked:
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or Money's worth in the amount of _____.
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$_____.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrances existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes" the amount of the outstanding balance on this lien or encumbrances is: None
6. The deed recording is computed as follows:
 - (a) Place the amount listed in Item 4 above here: \$_____
 - (b) Place the amount listed in Item 5 above here: \$_____
 - (If no amount is listed, place a zero here:
 - (c) Subtract line 6(b) from 6(a) \$_____
7. As required by Code Section 12-24-70, I state that I am a responsible who was connected with this transaction as: Grantor
8. I understand that a person required to furnish this Affidavit who willfully furnished a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction must be fined not more than \$1,000.00 or imprisoned not more than one year or both.

Mildred Hudson
Grantor - Mildred Hudson

Sworn to before me this 20th
day of May, A.D., 2011.

James L. Schriber
A NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: ~~7-20-2019~~

My Commission Expires
July 20, 2019

145



53 2011 00009884

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00009884 Vol: 8946 Pg: 115

Instrument Number: 2011- 00009884

As
Deed

Recorded On: May 24, 2011

Parties: HUDSON MILDRED

To

JACKSON HENRY RUSSELL

Recorded By: HENRY RUSSELL JACKSON

Num Of Pages: 5

Comment: JACKSON

**** Examined and Charged as Follows: ****

Deed		10.00				
Recording Charge:		10.00				
			Consideration			
	Tax Amount		Amount	RS#/CS#		
Deed Tax	0.00		10.00	D 2426	Deed County Tax	0.00
					Deed State Tax	0.00
EXEMPT						
Tax Charge:		0.00				

RECEIVED

May 24, 2011

ASSESSOR
BERKELEY COUNTY SC
JANET B. JURSKO
AUDITOR BERKELEY COUNTY SC

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:**Record and Return To:**

Document Number: 2011- 00009884
Receipt Number: 326872
Recorded Date/Time: May 24, 2011 02:50:13P
Book-Vol/Pg: Bk-R VI-8946 Pg-115
Cashier / Station: S Ritter / Cash Station 11

HENRY RUSSELL JACKSON
1905 MORGAN AVE
N CHARLESTON SC 29406



Cynthia B. Forte

Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF BERKELEY

KNOW ALL MEN BY THESE PRESENTS, that **WE, MILDRED HUDSON** and **HENRY RUSSEL JACKSON**, for and in consideration of the sum of FIVE AND NO/100 (\$5.00) DOLLARS, in hand paid at and before the sealing of these presents by **JANET LYNNE HUDSON**, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said **JANET LYNNE HUDSON**, her heirs and assigns, the following described real property, to-wit:

All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situate, lying and being in 2nd St. Johns Parish, Berkeley County, South Carolina, **MEASURING AND CONTAINING 1.55 Acres**, more or less, and designated as **TRACT B** on plat hereinafter referred to, and having metes, bounds, courses, distances, content and delineations as are more fully shown on plat captioned "PLAT SHOWING LOT 1 & 2 BEING SUBDIVIDED INTO TRACT A (1.56 ACRE) AND TRACT B (1.55 ACRE) PROPERTY OF MILDRED HUTSON AND HENRY RUSSELL JACKSON, 2ND ST. JOHNS PARISH, BERKELEY COUNTY, SOUTH CAROLINA", dated April 27, 2011, prepared by Cleatwood E. Droze, RLS No. 4550, and reference is hereby craved to said plat for a more complete and accurate description thereof. Said plat being recorded in the Office of Register of Deeds for Berkeley County, South Carolina, in Plat File Cabinet O, at Page 244-Q. TMS NO. Portion of 180-00-02-017.

Being a portion of the property acquired by grantor and grantee under the Will of Ruben Jackson, a/k/a Ruby Jackson, filed January 3, 1985 in Probate Roll No. 85-ES-08-01 which appears in the Office of the Probate Court for Berkeley County, South Carolina; also by Deed of Distribution recorded in Deed Book T-85, at Page 1 in the records for Berkeley County.

DEED DRAWN ---TITLE NOT EXAMINED

*Return to
Janet Lynne Hudson
1740 S. Pine Oak Rd
Berkeley Co. SC 29511*

TOGETHER with all and singular the Rights, Members Hereditaments and Appurtances to the Premises belonging, or in any way incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **JANET LYNNE HUDSON**, her heirs and assigns, forever.

AND we do hereby bind ourselves and our heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **JANET LYNNE HUDSON**, her heirs and assigns, against us and our heirs and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we have hereunto set our Hands and Seals this 19th day of May, in the year of our Lord two thousand eleven and in the two hundred thirty-fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Shelley R. Dente

Lorena L. Substanti

Charleswood E. Drove

Linda J. Arroyo

Mildred Hudson
MILDRED HUDSON

Henry Russell Jackson
HENRY RUSSELL JACKSON

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF Greenville

PERSONALLY appeared before me Shelley R. Denton and

made oath that he saw the within named **MILDRED HUDSON**, sign, seal and
as his/her act and deed, deliver the within written instrument, and that (s)he with

Teresa L. Fitzpatrick witnessed the execution thereof.

SWORN to before me this 20th

day of May, 2011

Shelley R. Denton

Jesse L. Fitzpatrick

A NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires:

My Commission Expires
July 20, 2019

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley

PROBATE

PERSONALLY appeared before me Cleatwood E. Dore and
made oath that he saw the within named **HENRY RUSSELL JACKSON**, sign,
seal and as his/her act and deed, deliver the within written instrument, and that
(s)he with Linda J. Dore witnessed the execution
thereof.

SWORN to before me this 19th

day of May, 2011

Linda J. Dore

A NOTARY PUBLIC FOR SOUTH CAROLINA

Cleatwood E. Dore

My Commission Expires: 7-13-2020

STATE OF SOUTH CAROLINA

COUNTY OF ~~BERKELEY~~ ^{Greenville}

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. Property being transferred does bear Berkeley County Tax Map No. A Portion of 180-00-02-017 and was transferred by MILDRED HUDSON and HENRY RUSSELL JACKSON to Janet Lynne Hudson, on _____, 2011.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) x exempt from the deed recording fees because: No consideration was charged for the transaction (3)
4. Check one of the following if either item (3) or item 3(b) above have been checked:
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or Money's worth in the amount of _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check Yes _____ or No x to the following: A lien or encumbrances existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes" the amount of the outstanding balance on this lien or encumbrances is: None
6. The deed recording is computed as follows:
 - (a) Place the amount listed in Item 4 above here: \$ _____
 - (b) Place the amount listed in Item 5 above here: \$ _____
(If no amount is listed, place a zero here:)
 - (c) Subtract line 6(b) from 6(a) \$ _____
7. As required by Code Section 12-24-70, I state that I am a responsible who was connected with this transaction as: Grantor
8. I understand that a person required to furnish this Affidavit who willfully furnished a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction must be fined not more than \$1,000.00 or imprisoned not more than one year or both.

Henry Russell Jackson
Grantor

Sworn to before me this 20th
day of Nov, A.D., 2011.

James P. Silvestri
A NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 7/20/2019

My Commission Expires
July 20, 2019



53 2011 00009885

Berkeley County
Cynthia B. Forte
Register of Deeds 00009885 Vol: 8946 Pg: 120
Moncks Corner 294616120

Instrument Number: 2011- 00009885

Recorded On: May 24, 2011

As
Deed

Parties: HUDSON MILDRED

To

HUDSON JANET LYNNE

Billable Pages: 1

Recorded By: JANET LYNNE HUDSON

Num Of Pages: 6

Comment: HUDSON

**** Examined and Charged as Follows: ****

Deed	11.00				
Recording Charge:	11.00				
		Consideration			
		Amount	RS#/CS#		
Deed Tax	0.00	11.00	D 2427	Deed County Tax	0.00
				Deed State Tax	0.00
EXEMPT					
Tax Charge:	0.00				

RECEIVED

May 24, 2011

ASSESSOR
 BERKELEY COUNTY SC
 JANET B. JUROSKO
 AUDITOR BERKELEY COUNTY SC

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:

Document Number: 2011- 00009885

Receipt Number: 326873

Recorded Date/Time: May 24, 2011 02:52:03P

Book-Vol/Pg: Bk-R VI-8946 Pg-120

Cashier / Station: S Ritter / Cash Station 11

Record and Return To:

JANET LYNNE HUDSON

1740 S LIVE OAK DRIVE

MONCK'S CORNER SC 29461



Cynthia B. Forte

Cynthia B Forte - Register of Deeds

BOOK 181, PAGE 2440
 RMC
 Filed and Recorded
 Nov 16, 2011 11:51A
 Cynthia B. Forte
 Register of Deeds Berkeley Co. SC

NOTE: TRACT A BEING CONVEYED TO HENRY
 RUSSELL JACKSON & LINDA L. JACKSON

TRACT B BEING CONVEYED TO
 JANET LYNNE HUDSON

Berkeley County Planning & Zoning
 EXEMPT

new lot
 (REASON)
 Livingston
 5/5/11 DATE

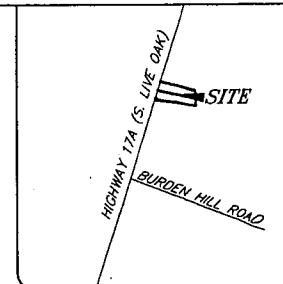
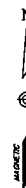
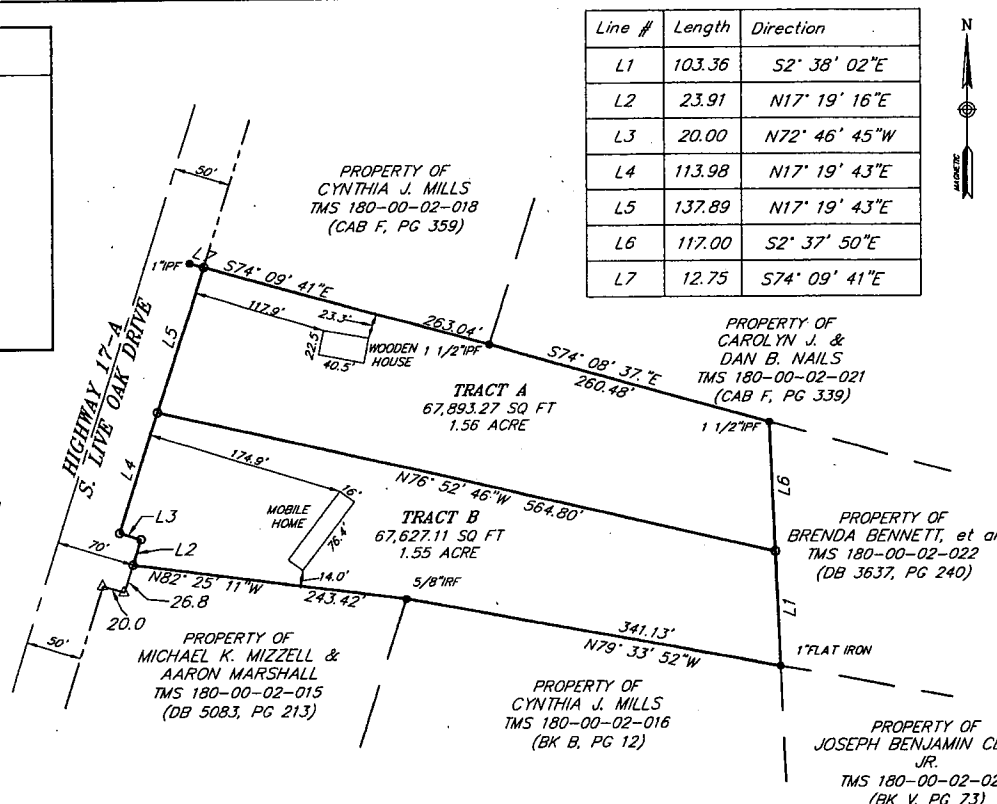
PLAT

SHOWING LOT 1 & 2 BEING SUBDIVIDED INTO TRACT A
 (1.56 ACRE) AND TRACT B (1.55 ACRE), PROPERTY OF
 MILDRED HUTSON AND HENRY RUSSELL JACKSON, 2ND
 ST JOHNS PARISH, BERKELEY COUNTY, SOUTH
 CAROLINA.

DATE: APRIL 27, 2011

SCALE: 1" = 100'

C.E. DROZE
 PO BOX 2132 MONCK'S CORNER, SC 29461
 Phone: (843) 899-7597



LOCATION MAP
 (NOT TO SCALE)

TMS 180-00-02-017
 DEED REF: BOOK T-085, PG 1
 PLAT REF: CABINET R, PG 260-A

NOTES:
 (1) THIS IS TO CERTIFY THAT I HAVE
 CONSULTED THE FEDERAL INSURANCE
 ADMINISTRATION FLOOD HAZARD
 BOUNDARY MAP, AND FIND THE
 SURVEY DESCRIBED IS NOT IN A
 FLOOD HAZARD AREA.
 (2) AREA WAS DETERMINED BY THE
 COORDINATE METHOD AND ALL
 INFORMATION SHOWN ON THIS PLAT
 OUTSIDE THE SURVEYED PROPERTY
 LINES IS FOR DESCRIPTIVE
 INFORMATION ONLY.
 (3) ALL REFERENCED MATERIALS ON
 THIS PLAT WERE USED TO PERFORM
 THIS SURVEY ONLY. THERE HAS NOT
 BEEN ANY TITLE SEARCH TO ACQUIRE
 INFORMATION SHOWN.
 (4) THERE HAS BEEN NO SURVEY
 DONE TO DETERMINE WETLANDS
 AND/OR UNSEEN STRUCTURES TO
 PROHIBIT DEVELOPMENT OF THIS
 PROPERTY.
 (5) ZONED: R-2

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND
 BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE
 WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR
 THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS
 OR EXCEEDS THE REQUIREMENTS FOR A CLASS C SURVEY AS
 SPECIFIED THEREIN.

CLEATWOOD E. DROZE
 RLS No. 4550

7D

STATE OF SOUTH CAROLINA,

COUNTY OF BERKELEY

Form 14—Title to Real Estate

Revised 1925

A194-79

1-21-69

WHEREAS, Thomas Jackson, late a resident of Berkeley County, heretofore died intestate during or about the year 1947, leaving surviving him as his sole heirs at law and distributees his wife, Ella Jackson, and his children, Annie Jackson Tisdale, Reuben Jackson, Grace Jackson Davis, Fred Jackson, John H. Jackson and Bessie Jackson Fiddy; and

WHEREAS, Ella Jackson, wife of the said Thomas Jackson, died intestate during or about the year 1948, leaving surviving as her sole heirs at law her six (6) children aforementioned; and

WHEREAS, Bessie Jackson Fiddy, daughter of Thomas Jackson and Ella Jackson, is now deceased, and the surviving children, other than John H. Jackson, are desirous of conveying to John H. Jackson their undivided interests in the lands hereinafter described; NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, THAT

We, Annie Jackson Tisdale, Reuben Jackson, Grace Jackson Davis and Fred Jackson,

in the State aforesaid for and in consideration of the sum of premises and the sum of One (\$1.00) Dollar DOLEARS of us to each in hand paid at and before the sealing of these presents by John H. Jackson

in the State aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said John H. Jackson, his heirs and assigns, all our right, title and interest in and to:

All that certain piece, parcel or lot of land, situate, lying and being in Second St. John's Parish, Berkeley County, South Carolina, Measuring and Containing two (2) acres, more or less, and Butting and Bounding as follows: on the North by lands of Reuben Jackson, formerly a part of the same tract; on the East by lands of Edward Clark, formerly a part of the same tract; on the South by lands formerly of C. A. Jones, now said to be lands of Burden; and on the West by lands of J. W. Adkins, formerly a part of the same tract; being the remaining portion of a tract of land said to contain ten and 3/10 (10.3) acres conveyed to Thomas Jackson by D. E. Hill by deed dated January 20, 1923 and of record in the Office of the Clerk of Court for Berkeley County in Book A-51 at page 227, which said ten and 3/10 (10.3) acres is said to be shown and delineated and designated as Tract No. 11 on a plat of the Barker Tract prepared by McCrady Brothers & Cheves in November 1918 and of record in said Office in Plat Book B at page 12.

8.1

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining,

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said

John M. Jackson, his

Heirs and Assigns forever.

PROBATE

The State of South Carolina; }

COUNTY OF BERKELEY

PERSONALLY APPEARED before me

Moses Danglefield

and made oath that he saw the within named Annie Jackson Tisdale, Reuben Jackson, Grace

Jackson Davis and Fred Jackson

Sign, seal and as their

act and deed,

deliver the within written instrument, and that he with
witnessed the execution thereof.

Moses Danglefield

SWORN to before me, this

21

day of January

19 69

Moses Danglefield

witness

NOTARY PUBLIC FOR SOUTH CAROLINA (SEAL)

THE STATE OF SOUTH CAROLINA,

RENUNCIATION OF DOWER

Berkeley County,

I, Moses Danglefield

a Notary Public for South Carolina

do hereby certify unto all whom it may concern, that Mrs. Verline Jackson

the wife of the within named Fred Jackson

did this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, re-
lease and forever relinquish unto the within named John H. Jackson, his

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular
the premises within mentioned and released.

Given under my Hand and Seal, this

21

day of January

Anno Domini 19 69

Moses Danglefield
Notary Public of South Carolina

(SEAL)

Verline Jackson
(Mrs.)

AND we do hereby bind ourselves and our Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said John H. Jackson, his Heirs and Assigns, against us and our Heirs, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals, this 21 day of January in the year of our Lord one thousand nine hundred and sixty-nine and in the one hundred and ninety-third year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED }
IN THE PRESENCE OF }

Mary Danner
Walter Danner
Annie Jackson Tisdale (L.S.)
Reuben Jackson (L.S.)
Grace Jackson Davis (L.S.)
Fred Jackson (L.S.)

THE STATE OF SOUTH CAROLINA,
Berkley County.

PERSONALLY appeared before me *Annie Jackson Tisdale*
and made oath that *she* saw the within named *Annie Jackson Tisdale*
sign, seal, and as her act and deed, deliver the within written Deed,
and that *she* with *X* witnessed the execution thereof.

SWORN to before me, this 22 day of January A. D. 1969
M. Danner (SEAL)
Notary Public of South Carolina

X Annie Jackson Tisdale

THE STATE OF SOUTH CAROLINA,
Berkley County.

RENUNCIATION OF DOWER

I, *M. Danner*, a Notary Public for South Carolina do hereby certify unto all whom it may concern, that Mrs. *Bearline Jackson* the wife of the within named *Reuben Jackson* did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named *John H. Jackson, his*

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 28 day of January Anno Domini 1969
M. Danner (SEAL)
Notary Public of South Carolina
John H. Jackson (M.S.)

1974

L A S T W I L L A N D T E S T A M E N T

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE NAME OF GOD, AMEN:

I, JOHN H. JACKSON, of Berkeley County, in the State aforesaid, being of sound and disposing mind and memory and being desirous of making such disposition of the worldly goods of which I may die possessed as to me seems just and proper, do hereby Make, Publish, Ordain and Declare this as and for my LAST WILL AND TESTAMENT, hereby revoking all other wills, codicils or other instruments of a testamentary nature heretofore made by me.

ITEM I: I commit my soul to the gracious God who gave it and direct that my body be decently interred and that a suitable marker be erected over my grave.

ITEM II: I direct my personal representative hereinafter named to pay all my just debts and funeral expenses, including the cost of a marker for my grave, as soon as practicable after my demise, and to that end do I charge my whole estate, real and personal.

ITEM III: Having already made provision for my daughter, Jeannette J. Jones, I Will and Bequeath to her the sum of Five and no/100 (\$5.00) Dollars and direct that she shall not otherwise participate in the division or distribution of my properties and estate.

ITEM IV: My home place where I now reside consisting of two and one-fourth (2 $\frac{1}{4}$) acres of land being a portion of the properties purchased by me from Fred (Fed) Jackson and the two (2) acres of land which I purchased from the Heirs of my father, the late Thomas Jackson, do I Will and Devise unto my wife, Eunice Jackson, for and during the full term of her natural life or widowhood and from and after the death of my said wife or upon her remarriage, which ever event shall first occur,

1
HJ
JH
JWD

A144/75

82

178

2
LHJ
J.M.W.
B.H.
SWP

do I Will and Devise my home place unto my daughter, Jean J. Caddell, and my daughter, Carolyn J. Nales, to them in the following shares or proportions, that is to say: unto Jean J. Caddell the Northern most portion or one-half ($\frac{1}{2}$) thereof inclusive of my dwelling house and to Carolyn J. Nales the Southern most portion or one-half ($\frac{1}{2}$) thereof presently unimproved to them in fee simple remainder and from and after the death of my said wife, Eunice Jackson, or upon her remarriage, which ever event shall first occur, do I Will and Devise the two (2) acre parcel of land which I purchased from the Heirs of my father, Thomas Jackson, unto my daughter, Jackie Jackson, to her in fee simple remainder. I expressly Will and direct that the remainder interests in my said properties shall pass and vest at the time of my demise and shall not remain contingent.

ITEM V: All of the rest residue and remainder of my properties, real, personal and mixed, of whatsoever nature and kind and wheresoever situate, do I Will, Devise and Bequeath unto my wife, Eunice Jackson, to her absolutely and in fee simple should she survive me; and should she my said wife predecease me or should we die simultaneously or approximately so in a common accident or calamity, or under circumstances causing doubt as to which of us survived the other, then do I Will, Devise and Bequeath my said residuary properties and estate unto my daughters, Jean J. Caddell, Carolyn J. Nales and Jackie Jackson, to them in equal shares, share and share alike, absolutely or to the survivor should one or the other predecease me leaving no issue me surviving; provided, that the child or children me surviving of any predeceased daughter of mine, as named above, shall take in equal shares the share the deceased parent would have taken had she survived me.

ITEM VI: I hereby Nominate, Constitute and Appoint my wife, Eunice Jackson, Executrix of this my LAST WILL AND TESTAMENT, and should she die, resign or for any other reason fail to qualify and act as such, then do I Nominate, Constitute

and Appoint my daughter, Jean J. Caddell, Executrix to act in her place and stead. I direct that my personal representative shall serve without bond for the faithful performance of her duties and hereby vest in her full power, authority and discretion to do all acts and things deemed by her necessary or convenient to the winding up of the affairs of my estate and a distribution hereunder.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 28th day of July A. D. 1970.

John H. Jackson (L.S.)
JOHN H. JACKSON

Signed, Sealed, Published and Declared by JOHN H. JACKSON as and for his LAST WILL AND TESTAMENT in the presence of us, who in his presence and in the presence of each other, all present together at his request, have hereunto subscribed our names as witnesses:

M. L. Lutz Address Moncks Corner, S.C.
Betty Ann Hanna Address Moncks Corner, S.C.
Paul W. Baulch Address Moncks Corner, S.C.

Recorded This 18th day of June, 19 74
Book 5 on page 201
Joe W. Platt, Judge of Probate
Berkeley County, S. C.

3
JHJ
JML
BLH
slws

100

State of South Carolina,
COUNTY OF BERKELEY

BOOK **A537** PAGE **172**

WHEREAS, John H. Jackson died testate on or about May 12, 1974, seized and possessed of a five-sixths (5/6) interest in and to the following described property; and

WHEREAS, by his Last Will and Testament dated July 28, 1970, and duly probated the Probate Court for Berkeley County, the said John H. Jackson devised his five-sixths (5/6) interest in and to the following described property to his wife, Eunice Jackson, for life or upon her remarriage, with the remainder over to his daughter, Cynthia J. Jackson; and

WHEREAS, Eunice Jackson is desirous of conveying her five-sixths (5/6) interest in and to the following described property to her daughter, Cynthia J. Jackson; and

WHEREAS, Bessie Jackson Fiddie, the owner of the remaining one-sixth (1/6) interest in the following described property, is now deceased, leaving as her sole heirs at law her children, Leroy Fiddie; Eugene Fiddie; Dorothy Hinton; Helen Bevis; Leonard Fiddie; and Helen Bevis, administratrix of the Estate of Donald Fiddie; and they are desirous of conveying their one-sixth (1/6) interest, which they hold together as tenants in common, one with the other, and which they acquired through the death of Bessie Jackson Fiddie, to Cynthia J. Jackson.

NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, THAT

Leroy Fiddie; Eugene Fiddie; Dorothy Hinton; Helen Bevis; Leonard Fiddie; and Helen Bevis, as administratrix of the Estate of Donald Fiddie; and Eunice Jackson,

in the State aforesaid _____ for/and _____ in consideration of the sum of
 -----ONE THOUSAND AND 00/100 (\$1,000.00)----- DOLLARS,
 to _____ US _____ in hand paid at and before the sealing of these presents by CYNTHIA J. JACKSON

in the State aforesaid _____ County aforesaid _____ the receipt whereof is hereby
 acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and
 release unto the said CYNTHIA J. JACKSON, her heirs and assigns, the following described
 property, to wit:

ALL that certain piece, parcel or lot of land, situate, lying and being in Second St. John's Parish, Berkeley County, South Carolina, measuring and containing two (2) acres, more or less, and butting and bounding as follows: On the north by lands of Reuben Jackson, formerly a part of the same tract; on the east by lands of Edward Clark, formerly a part of the same tract; on the south by lands formerly of C.A. Jones, now said to be lands of Burden; and on the west by lands of J.W. Adkins, formerly a part of the same tract; being the remaining portion of a tract of land said to contain ten and 3/10 (10.3) acres conveyed to Thomas Jackson by D.E. Hill by deed dated January 20, 1923, and of record in the Office of the Clerk of Court for Berkeley County in Book A-51, at Page 227, which said ten and 3/10 (10.3) acres is said to be shown and delineated and designated as Tract No. 11 on a plat of the Barker Tract prepared by McCrady Brothers & Cheves in November, 1918, and of record in said Office in Plat Book B, at Page 12.

The five-sixths (5/6) interest in the above property was conveyed to John H. Jackson by deed from Annie Jackson Tisdale, Reuben Jackson, Grace Jackson Davis and Fred Jackson by deed dated January 21, 1969, and recorded in the Office of the Clerk of Court for Berkeley County on February 11, 1969, in Book A-194, at Page 79.

TMS # 180-00-02-016

Grantee's address: Rt. 4, Box ⁴³~~133~~
 Moncks Corner, South Carolina 29461

8.3
181

8

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging; or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said
CYNTHIA J. JACKSON, her Heirs and Assigns forever.

AND we do hereby bind ourselves and our Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said CYNTHIA J. JACKSON, her

Heirs and Assigns, against us and our Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hand s and Seal s, this 30th day of November in the year of our Lord one thousand nine hundred and eighty-three and in the two hundred and seventh year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Rhonda R. Japley
Denise P. Welch

Eunice Jackson (LS)
EUNICE JACKSON

Leroy Fiddie (L. S.)
LEROY FIDDIE

Eugene Fiddie (L. S.)
EUGENE FIDDIE

Dorothy Hinton (LS)
DOROTHY HINTON

Helen Bevis (LS)
HELEN BEVIS

Leonard Fiddie (LS)
LEONARD FIDDIE

Helen Bevis (LS)
HELEN BEVIS, Administratrix of the Estate of Donald Fiddie

The State of South Carolina,
CHARLESTON County.

PERSONALLY appeared before me the undersigned witness

and made oath that (s) he say the within named EUNICE JACKSON, LEROY FIDDIE, EUGENE FIDDIE, DOROTHY HINTON, HELEN BEVIS, LEONARD FIDDIE and HELEN BEVIS, as administratrix of the Estate of Donald Fiddie sign, seal, and as their act and deed, deliver the within written Deed.

and that (s) he with the other witnesses above subscribed

witnessed the execution thereof.

SWORN to before me, this 30th

day of November A.D. 19 83.

Denise P. Welch (SEAL)
Notary Public of South Carolina
My Commission Expires: 5/22/85

Rhonda R. Japley

The State of South Carolina,
CHARLESTON County.

RENUNCIATION OF DOWER
MALE GRANTOR, LEONARD FIDDIE,
IS UNMARRIED.

I, Denise P. Welch, a Notary Public for South Carolina

do hereby certify unto all whom it may concern, that Mrs. Mildred Fiddie

the wife of the within named Eugene Fiddie

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named

CYNTHIA J. JACKSON, her

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 30th day of November Anno Domini 19 83.

Denise P. Welch (SEAL)
Notary Public of South Carolina
My Commission Expires: 5/22/85

Mildred Fiddie
MILDRED FIDDIE

THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

RENUNCIATION OF DOWER

BOOK 1527 PAGE 176

I, DENISE P. WELCH, a Notary Public for South Carolina, do hereby certify unto all whom it may concern that Mrs. Betty Fiddie, the wife of the within named Leroy Fiddie, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Cynthia J. Jackson, her heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

GIVEN under my Hand and Seal this 30th day of November, 1983.

SWORN to before me this 30th day of November, 1983.

Betty Fiddie
BETTY FIDDIE

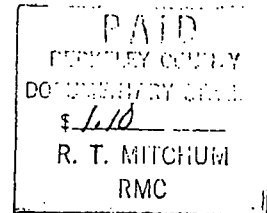
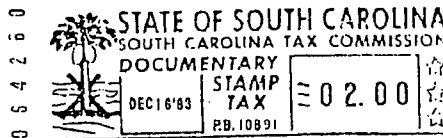
Denise P. Welch (LS)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 1985

RECORDED THIS 19th DAY
OF December 19 83
ASSESSOR, BERKLEY COUNTY, S.C.

Filed	<u>16th</u>	day	<u>December</u>	A.D. 19 <u>83</u>
at	<u>1:06</u>	o'clock	<u>P</u>	M.
and recorded in Book				
Page				
Recorded this	<u>16th</u>	day	<u>December</u>	19 <u>83</u>
of	<u>3</u>	in Book		
in Book	<u>3</u>	Page	<u>152</u>	
Auditor	<u>Bernard A. Jackson</u>	County, S.C.		

State of South Carolina,

Wendy Deane Butler
10
4.00
3.00
1.10



14	
13	MISC. - XEROX - ECT.
12	PAYMENT ON ACCOUNT
11	COURT FILING FEE
10	FINANCING STATEMENTS FEE
9	CONTRACT OF SALE FEE
8	POWER OF ATTORNEY FEE
7	LEASE RECORDING FEE
6	MORTGAGE RECORDING FEE
5	DEED RECORDING FEE
4	NARCOTICS COMMISSION FINE
3	WILDLIFE COMMISSION FINE

1567

BERKELEY COUNTY RMC
223 NORTH LIVE OAK DRIVE
MONCK'S CORNER, S.C. 29661



RETAIN THIS RECEIPT
FOR YOUR RECORDS

481

Auditor Property Records Cards

- 1) TMS #180-00-02-015
- 2) TMS #180-00-02-016
- 3) TMS #180-00-02-017
- 4) TMS #180-00-02-018
- 5) TMS #180-00-02-020
- 6) TMS #180-00-02-021
- 7) TMS #180-00-02-022
- 8) TMS #180-00-02-023
- 9) TMS #180-00-02-024
- 10) TMS #180-00-02-099
- 11) TMS #180-00-02-113

9

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-015

Owner Information:

MAZELL MICHAEL K & AARON MARSHALL
2425 FARMHILL AVE

Summerville, SC 294835370

Council District: C6 Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52

Fire District: F16

Appraiser ID: EM

Tax District: T06

Lot: Block: Section:

TIS Zone: 1

Zoning: Berkeley County - R2

Jurisdiction: 1P

Homestead Exempt: No

Acres: 1.65

Parent TMS:

Lots: 0.0

Notes: NO CHANGE PARCEL 7/92

REASS 7-98 WRL

CHG LAND VALUE FOR REASST 5/02 SM

SOLD 0.096 TO SCDOT FOR \$13,000 - 8169/300 10/09

ADDRESS CHANGE PER USPS DELQ TAX RETURNED MAIL

Site addresses:

1746 S LIVE OAK DR
MONCK'S CORNER, SC 29461, Unit/Lot:

1748 S LIVE OAK DR
MONCK'S CORNER, SC 29461, Unit/Lot:

Previous Owner History:

Owner: MAZELL MICHAEL K (1/2)	Sale Date: 10/12/2005	Sale Price: \$5.00	Deed Book-Page: 5083 - 0213	Plat: BY - WIL	Transfer Notes: 1.75 Acres Recorded on Plat BY - WIL
Owner: KEENER WANDA D	Sale Date: 02/23/2005	Sale Price: \$6,000.00	Deed Book-Page: 4539 - 0005	Plat: BY - WIL	Transfer Notes: 1.75 Acres Recorded on Plat BY - WIL
Owner: LITCHFIELD GERTRUDE D	Sale Date: 07/16/1991	Sale Price: \$5.00	Deed Book-Page: 0170 - 0139	Plat: BY - WIL	Transfer Notes: 1.75 Acres Recorded on Plat BY - WIL

Sales Information:

Last Sale Date: 10/12/2005
Recording Date: 10/14/2005
Sale Price: \$5.00

Plat Information: BY - WIL
Deed Book: 5083
Deed Page: 0213

Sales Validity: 7
Validity Other:

Valuation Information:

Building Market: 0
Land Market: 37,000

Building Taxable (4% Res): 0
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 37,000
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 37,000 Total Assessment: 2,220

Fee Summary:

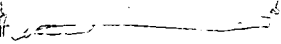
Fee Name

Fee Amount

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-016	Council District: C6	Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52
Owner Information:	Fire District: F16	Appraiser ID: EM
MILLS CYNTHIA J JACKSON	Tax District: T06	Lot: 3 Block: Section:
	TIS Zone: 1	Zoning: Berkeley County - R2
MONCK'S CORNER, SC 294619407	Jurisdiction: 1P	Homestead Exempt: No
	Acres: 2.00	Parent TMS:
	Lots: 0.0	Notes: VACANT - PARCEL 7/92
		NO ACCESS REASS 7-98 WRL
		CHG LAND VALUE FOR REASST 5/02 SM
		APPEAL 2005 NO ACCESS CHANGED VALUE 4/05 SWM
		ADJ AC PER PLAT CAB R PG 260A 1/07
		PLAT CAB R/260-A HAS BEEN CANCELLED BY COURT ORDER
		CASE # 2006-CP-08-2581 RECORDED IN BK 7452/161 -
		ACREAGE RETURNED TO ORIGINAL 2.00 AC 07/08

Site addresses:

Previous Owner History:

Owner: FIDDIE LEROY	Sale Date:	Sale Price:	Deed Book-Page:	Plat: B -	Transfer Notes: 2.00 Acres
ETAL	11/30/1983	\$1,000.00	A537 - 0172	12	Recorded on Plat B - 12
Owner: JACKSON JOHN	Sale Date:	Sale Price:	Deed Book-Page:	Plat:	Transfer Notes: 2.00
H BY WIL	11/13/1974	\$0.00	132 - 0073		

Sales Information:

Last Sale Date: 11/30/1983	Plat Information: B - 12	Sales Validity: 0
Recording Date: 12/16/1983	Deed Book: A537	Validity Other:
Sale Price: \$1000.00	Deed Page: 0172	

Valuation Information:

Building Market: 0	Building Taxable (4% Res): 0	Land Taxable (4% Res): 0
Land Market: 20,000	Building Taxable (6% Other): 0	Land Taxable (6% Other): 13,225
	Building Taxable (4% Ag): 0	Land Taxable (4% Ag): 0
	Building Taxable (6% Ag): 0	Land Taxable (6% Ag): 0
	Total Taxable Value: 13,225	Total Assessment: 790

Fee Summary:

Fee Name	Fee Amount
Acreage Fire Fee	10

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-017
Owner Information:

NORTH CHARLESTON, SC
294064881

Council District: C6
Fire District: F16
Tax District: T06
TIS Zone: 1
Jurisdiction: 1P
Acres: 1.56
Lots: 0.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52
Appraiser ID: EM
Lot: TR A Block: Section:
Zoning: Berkeley County - R2
Homestead Exempt: No
Parent TMS:
Notes: SOLD 1 AC TO HALROYD MULLINAX
MOVED MH# 08872 TO PARCEL 180-00-02-016
CHG TO \$4.00 \$ 50% DEP- PARCEL 7/92
REASS 7-98 WRL
CHG CLASS FOR REASST 5/02 SM
2004 SON TAKES CARE OF BUSINESS -HIS MAILING ADDRESS
SOLD 0.093 AC TO SCDOT FOR \$10,000 PER DEED BK 8269 PG 307 &
315 12/09
DEATH CERT ON FILE FOR EVA LEARLINE JACKSON (01/31/2011)
02/11
SEP 1.55 (TR B/180-00-02-113) PER PLAT CAB O PG 244-Q 05/11

Site addresses:

1734 S LIVE OAK DR
MONCKS CORNER, SC 29461, Unit/Lot:

Previous Owner History:

Owner: HUTSON MILDRED & HENRY RUSSELL JACKSON,	Sale Date: 05/20/2011	Sale Price: \$5.00	Deed Book-Page: 8946 - 115	Plat: Transfer Notes:
Owner: JACKSON RUBIN BY WIL	Sale Date: 01/03/1985	Sale Price: \$0.00	Deed Book-Page: T085 - 0001	Plat: Transfer Notes: PLAT RECORDED - CABO/244-Q (1.56) 05/11
Owner: JACKSON THOMAS	Sale Date: 09/21/1935	Sale Price: \$5.00	Deed Book-Page: A60 - 0274	Plat: Transfer Notes:

Sales Information:

Last Sale Date: 05/20/2011
Recording Date: 05/24/2011
Sale Price: \$5.00

Plat Information:
Deed Book: 8946
Deed Page: 115

Sales Validity: 7A
Validity Other:

Valuation Information:

Building Market: 41,100
Land Market: 35,200

Building Taxable (4% Res): 0
Building Taxable (6% Other): 41,100
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 35,200
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 76,300 Total Assessment: 4,580

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-018
Owner Information:

JN

MONCKS CORNER, SC 294619407

Council District: C6
Fire District: F16
Tax District: T06
TIS Zone: 1
Jurisdiction: 1P
Acres: 1.33
Lots: 0.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52
Appraiser ID: EM
Lot: Block: Section:
Zoning: Berkeley County - R2
Homestead Exempt: No
Parent TMS:
Notes: ADD DECK TO RES PARCEL 07/92
REASS 7-98 WRL
ADD 1 SPACE TO PARK 9/06 SWM
LIFE ESTATE WAS DROPPED PER DENISE MF 2-17-04
SOLD 0.063 TO SCDOT FOR \$10,000 - 8432/088 04/10
ADD DECK TO RES PARCEL 07/92
REASS 7-98 WRL
ADD 1 SPACE TO PARK 9/06 SWM

Site addresses:			
1724 S LIVE OAK DR MONCKS CORNER, SC 29461, Unit/Lot: 2	1724 S LIVE OAK DR MONCKS CORNER, SC 29461, Unit/Lot: 1	1726 S LIVE OAK DR MONCKS CORNER, SC 29461, Unit/Lot:	1730 S LIVE OAK DR MONCKS CORNER, SC 29461, Unit/Lot: 1
1730 S LIVE OAK DR MONCKS CORNER, SC 29461, Unit/Lot: 3	1730 S LIVE OAK DR MONCKS CORNER, SC 29461, Unit/Lot: 2		

Previous Owner History:

Owner: JACKSON EUNICE B ETAL	Sale Date: 08/07/1986	Sale Price: \$17,000.00	Deed Book-Page: A662 - 0161	Plat: CAB F - 359	Transfer Notes: 1.39 Acres Recorded on Plat CAB F - 359
Owner: JACKSON EUNICE B LIFE EST	Sale Date: 10/08/1974	Sale Price: \$5.00	Deed Book-Page: A282 - 0152	Plat: V - 089	Transfer Notes: 1.49 Acres Recorded on Plat V - 089

Sales Information:

Last Sale Date: 08/07/1986
Recording Date: 03/13/1986
Sale Price: \$17000.00

Plat Information: CAB F - 359
Deed Book: A662
Deed Page: 0161

Sales Validity: 0
Validity Other:

Valuation Information:

Building Market: 81,600
Land Market: 31,900

Building Taxable (4% Res): 0
Building Taxable (6% Other): 74,733
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 29,216
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 103,949 **Total Assessment:** 6,230

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-020

Owner Information:

CAROLYN J

Pinopolis, SC 294695047

Council District: C6

Fire District: F16

Tax District: T06

TIS Zone: 1

Jurisdiction: 1P

Acres: 0.00

Lots: 1.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52

Appraiser ID: EM

Lot: Block: Section:

Zoning: Berkeley County - R2

Homestead Exempt: No

Parent TMS:

Notes: ADDED METAL & BVFP RW 8-4-88

SHOULD HAVE BEEN 1/2 ACRE NOT 1 ACRE 11/91

ADDED PORCH & STORAGE 1/92 WRL

CHANGED MEAS - PARCEL 7-92

ADDED DET GAR 1/95

REASS 7-98 RL

MOVED MHOMES TO 1800002021 PER CK SHEET 4/02 MPR

CHANGE TO 6% NOW LIVES @ 1020000036 2/2003

ADD CARPORT & CHG CLASS--REASST 5/02 SM

GAR/SHED /CPORT/POOL MOVED TO 021 2/04 SWM

APPEAL 2005 NO CHANGE MARKET SALES 2/05 SWM

Site addresses:

130 BRANCH RD
MONCKS CORNER, SC 29461, Unit/Lot:

Previous Owner History:

Owner: NAILS DANNY B JR 1/2 INTEREST	Sale Date: 11/09/2001	Sale Price: \$5.00	Deed Book-Page: 2483 - 0032	Plat: U - 145	Transfer Notes: 1.0 LT Recorded on Plat U - 145
Owner: NAILS DANNY B	Sale Date: 10/21/1991	Sale Price: \$5.00	Deed Book-Page: 0003 - 0245	Plat: U - 145	Transfer Notes: .74 Acres Recorded on Plat U - 145
Owner: NAILS CAROLYN J	Sale Date: 10/21/1991	Sale Price: \$5.00	Deed Book-Page: 0003 - 0242	Plat: U - 145	Transfer Notes: .74 Acres Recorded on Plat U - 145
Owner: JONES GEORGE ETAL	Sale Date: 09/08/1972	Sale Price: \$300.00	Deed Book-Page: A244 - 0151	Plat: U - 145	Transfer Notes: .75 Acres Recorded on Plat U - 145

Sales Information:

Last Sale Date: 11/09/2001
Recording Date: 11/13/2001
Sale Price: \$5.00

Plat Information: U - 145
Deed Book: 2483
Deed Page: 0032

Sales Validity: 7
Validity Other:

Valuation Information:

Building Market: 140,800
Land Market: 24,000

Building Taxable (4% Res): 0
Building Taxable (6% Other): 140,800
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 24,000
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 164,800

Total Assessment: 9,890

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-021
Owner Information:

Pinopolis, SC 294695047

Council District: C6
Fire District: F16
Tax District: T06
TIS Zone: 1
Jurisdiction: 1P
Acres: 1.17
Lots: 0.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52
Appraiser ID: EM
Lot: Block: Section:
Zoning: Berkeley County - R2
Homestead Exempt: No
Parent TMS:
Notes: ADDITION TO WORKSHOP 12/88
WORKSHOP DESTROYED BY HUGO 10/90
STORAGE-GONE-PARCEL-7/92
VAC REASS 7-98 WRL
REASS 7-98 WRL
NO CHANGE REASSESSMENT 2004
ADDED DET GAR FOR 2003 PERMITS 12/02 SWM
BLDGs /POOL MOVED HERE FROM 020 2/04 SWM
APPEAL 2005 NO CHANGE 1/05 SWM
ADJUSTED SF DUE TO 1X1 - 7/2007

Site addresses:

128 BRANCH RD
MONCK'S CORNER, SC 29461, Unit/Lot:

136 BRANCH RD
MONCK'S CORNER, SC 29461, Unit/Lot:

138 BRANCH RD
MONCK'S CORNER, SC 29461, Unit/Lot:

Previous Owner History:

Owner: NAILS CAROLYN J
ETAL INT
Sale Date: 08/07/1986

Sale Price: \$1.00
Deed Book-Page: A665 - 0144

Plat: F - 339
Transfer Notes: 1.17 Acres
Recorded on Plat F - 339

Owner: JACKSON EUNICE
B
Sale Date: 10/08/1974

Sale Price: \$5.00
Deed Book-Page: A282 - 0153

Plat: V - 89
Transfer Notes: 1.04 Acres
Recorded on Plat V - 89

Sales Information:

Last Sale Date: 08/07/1986
Recording Date: 09/03/1986
Sale Price: \$1.00

Plat Information: F - 339
Deed Book: A665
Deed Page: 0144

Sales Validity: 7
Validity Other:

Valuation Information:

Building Market: 36,800
Land Market: 28,100

Building Taxable (4% Res): 0
Building Taxable (6% Other): 36,800
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 28,100
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 64,900

Total Assessment: 3,900

Fee Summary:

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-022
Owner Information:
 BENNETT BRENDA ETAL

1

MONCKS CORNER, SC 294610000

Council District: C6 **Neighborhood:** D410 - HIGHWAYS 17-A / OLD 52 / NEW 52
Fire District: F16 **Appraiser ID:** EM
Tax District: T06 **Lot:** Block: Section:
TIS Zone: 1 **Zoning:** Berkeley County - R2
Jurisdiction: 1P **Homestead Exempt:** No
Acres: 1.00 **Parent TMS:**
Lots: 0.0 **Notes:** RES GONE-PARCEL-7/92

FILED FOR 4% 10/92 WRL
 7-95 C/B MH#18184 AND LAND FOR H/S
 REASS 7-98 WRL
 NO CHANGE REASSESSMENT 2004
 LIFE ESTATE THEN TO: BRENDA BENNETT, ANDREW MULLINAX
 & SHELBY JEAN CLARK PER DEED BK 3637 PG 240 10/03
 BERTHA CLARK MULLINAX IS DECEASED DEATH CERT
 ON FILE 1/08

Site addresses:

144 BRANCH RD
 MONCKS CORNER, SC 29461, Uni/Lot:

Previous Owner History:

Owner: MULLINAX BERTHA CLARK	Sale Date: 10/15/2003	Sale Price: \$5.00	Deed Book-Page: 3637 - 0240	Plat: Transfer Notes:
Owner: MULLINAX HALORID SR ES	Sale Date: 01/02/1992	Sale Price: \$0.00	Deed Book-Page: 0041 - 0289	Plat: Transfer Notes: 1.00
Owner: JACKSON RUBEN	Sale Date: 04/09/1941	Sale Price: \$5.00	Deed Book-Page: A69 - 0324	Plat: Transfer Notes:

Sales Information:

Last Sale Date: 10/15/2003
Recording Date: 10/16/2003
Sale Price: \$5.00

Plat Information:
Deed Book: 3637
Deed Page: 0240

Sales Validity: 9
Validity Other:

Valuation Information:

Building Market: 3,700
Land Market: 24,000

Building Taxable (4% Res): 0
Building Taxable (6% Other): 3,700
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 24,000
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 27,700 **Total Assessment:** 1,660

Fee Summary:

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-023

Owner Information:

JIN JR

MONCKS CORNER, SC 294617400

Council District: C6

Fire District: F16

Tax District: T06

TIS Zone: 1

Jurisdiction: 1P

Acres: 0.00

Lots: 1.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52

Appraiser ID: EM

Lot: A Block: Section:

Zoning: Berkeley County - R2

Homestead Exempt: No

Parent TMS:

Notes: ADD STORAGE ON MH PARCEL 7/92

APPRAISED MH 5308 AS REAL ESTATE REASSMT

ADD DECK, ADDITION, AND CHG CLASS--REASST 5/02 SM

Site addresses:

152 BRANCH RD
MONCKS CORNER, SC 29461, Unit/Lot:

Previous Owner History:

Owner: CLARK EMILY	Sale Date: 01/25/2003	Sale Price: \$5.00	Deed Book-Page: 3113 - 0114	Plat: V - 073	Transfer Notes: .50 Acres Recorded on Plat V - 73
Owner: CLARK EMILY H ETAL	Sale Date: 11/20/1998	Sale Price: \$5.00	Deed Book-Page: 1499 - 0179	Plat: V - 073	Transfer Notes: .50 Acres Recorded on Plat V - 73
Owner: CLARK JOSEPH B (DEED D	Sale Date: 06/06/1998	Sale Price: \$0.00	Deed Book-Page: 1351 - 0053	Plat: V - 73	Transfer Notes: .50
Owner: CLARKE CARRIE	Sale Date: 09/26/1974	Sale Price: \$5.00	Deed Book-Page: A278 - 0082	Plat: V - 73	Transfer Notes: .50 Acres Recorded on Plat V - 73
Owner: CLARKE EDWARD	Sale Date: 02/16/1955	Sale Price: \$1.00	Deed Book-Page: A99 - 0265	Plat:	Transfer Notes:

Sales Information:

Last Sale Date: 01/25/2003
Recording Date: 01/27/2003
Sale Price: \$5.00

Plat Information: V - 073
Deed Book: 3113
Deed Page: 0114

Sales Validity: 2
Validity Other:

Valuation Information:

Building Market: 36,600
Land Market: 24,000

Building Taxable (4% Res): 36,600
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 24,000
Land Taxable (6% Other): 0
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 60,600

Total Assessment: 2,420

Fee Summary:

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-024

Owner Information:

METTS ALICE FAYE
156 BRANCH RD

MONCKS CORNER, SC 294617400

Council District: C6

Fire District: F16

Tax District: T06

TIS Zone: 1

Jurisdiction: 1P

Acres: 0.00

Lots: 1.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52

Appraiser ID: EM

Lot: C Block: Section:

Zoning: Berkeley County - R2

Homestead Exempt: No

Parent TMS:

Notes: SOLD 1 LT TO J B CLARKE LEAVES 1 LT

2-91 INCREASED DEP TO 50%

DESC CHANGE PARCEL 7/92

ADDED STORAGE N/V PERMIT 8-93

REASS 7-98 WRL

APPEAL SMALL LOT AND HOUSE HAS NO VALUE 4/01 MPR

REMOVE RES FOR REASST 5/02 SM

Site addresses:

156 BRANCH RD
MONCKS CORNER, SC 29461, Unit/Lot:

Previous Owner History:

Owner: CLARK EMILY	Sale Date: 01/25/2003	Sale Price: \$5.00	Deed Book-Page: 3113 - 0114	Plat: V - 073	Transfer Notes: 0.25 Acres Recorded on Plat V - 073
Owner: CLARK EMILY H ETAL	Sale Date: 11/20/1998	Sale Price: \$5.00	Deed Book-Page: 1499 - 0179	Plat: V - 073	Transfer Notes: 0.50 Acres Recorded on Plat V - 073
Owner: CLARK CARRIE O B EST O	Sale Date: 03/02/1991	Sale Price: \$5.00	Deed Book-Page: A902 - 0296	Plat: V - 073	Transfer Notes: 0.50 Acres Recorded on Plat V - 073

Sales Information:

Last Sale Date: 01/25/2003
Recording Date: 01/27/2003
Sale Price: \$5.00

Plat Information: V - 073
Deed Book: 3113
Deed Page: 0114

Sales Validity:
Validity Other:

Valuation Information:

Building Market: 0
Land Market: 15,000

Building Taxable (4% Res): 0
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 13,225
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 13,225 **Total Assessment:** 790

Fee Summary:

Fee Name

Fee Amount

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-099

Owner Information:

CLARK JOSEPH BENJAMIN JR

MONCKS CORNER, SC 294617400

Council District: C6

Fire District: F16

Tax District: T06

TIS Zone: 1

Jurisdiction: 1P

Acres: 0.00

Lots: 1.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52

Appraiser ID: EM

Lot: B Block: Section:

Zoning: Berkeley County - R2

Homestead Exempt: No

Parent TMS: 180-00-02-024

Notes: VAC SPLITS 03/03 SWM

N/C REASSMT 2004 8/03 SWM

Site addresses:

Previous Owner History:

Owner: CLARK EMILY
H

Sale Date:
01/25/2003

Sale Price: \$5.00
Deed Book-Page:
3133 - 0114

Plat: V - 073
Transfer Notes: 0.25 Acres Recorded
on Plat V - 073

Owner: CLARK EMILY
H ETAL

Sale Date:
11/20/1998

Sale Price: \$0.00
Deed Book-Page:
1499 - 0179

Plat: V - 073
Transfer Notes: 0.50

Sales Information:

Last Sale Date: 01/25/2003
Recording Date: 01/27/2003
Sale Price: \$5.00

Plat Information: V - 073
Deed Book: 3133
Deed Page: 0114

Sales Validity: 2
Validity Other:

Valuation Information:

Building Market: 0
Land Market: 15,000

Building Taxable (4% Res): 0
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 13,225
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 13,225 Total Assessment: 790

Fee Summary:

Fee Name	Fee Amount
Acreage Fire Fee	10

Building Information:

Building Count: 0
Residence Count: 0

Yard Item Count: 0
Mobile Homes on Property: 0

Unofficial Berkeley County Property Card



Summary Information:

TMS: 180-00-02-113
Owner Information:

Moncks Corner, SC 294617215

Council District: C6
Fire District: F16
Tax District: T06
TIS Zone: 1
Jurisdiction: 1P
Acres: 1.55
Lots: 0.0

Neighborhood: D410 - HIGHWAYS 17-A / OLD 52 / NEW 52
Appraiser ID: EM
Lot: TR B Block: Section:
Zoning: Berkeley County - R2
Homestead Exempt: No
Parent TMS: 180-00-02-017
Notes:

Site addresses:

1740 S LIVE OAK DR
MONCK'S CORNER, SC 29461, Unit/Lot:

Previous Owner History:

Owner: HUTSON MILDRED &
HENRY RUSSELL JACKSON,

Sale Date:
05/19/2011

Sale Price: Deed Book-Page:
\$5.00 8946 - 120

Plat: Transfer Notes:

Owner: JACKSON RUBIN BY WIL

Sale Date:
01/03/1985

Sale Price: Deed Book-Page:
\$0.00 T085 - 0001

Plat: Transfer Notes: PLAT RECORDED -
CABO/244-Q (1.55) 05/11

Sales Information:

Last Sale Date: 05/19/2011
Recording Date: 05/24/2011
Sale Price: \$5.00

Plat Information:
Deed Book: 8946
Deed Page: 120

Sales Validity: 7A
Validity Other:

Valuation Information:

Building Market: 0
Land Market: 35,000

Building Taxable (4% Res): 0
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 35,000
Land Taxable (6% Other): 0
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

Total Taxable Value: 35,000 Total Assessment: 1,400

Fee Summary:

Fee Name

Fee Amount

Building Information:

Building Count: 0
Residence Count: 0

Yard Item Count: 0
Mobile Homes on Property: 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	Case No.: 2006-CP-08-2581
	)	
CYNTHIA J. MILLS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FINAL ORDER DENYING
	)	PLAINTIFF RELIEF AND
	)	QUIETING TITLE IN DEFENDANT
LEARLINE JACKSON, JANET L.	)	LEARLINE JACKSON
HUDSON, and ROBERT R. HYDEN,	)	
	)	
Defendants.	)	
	)	

2008 MAR 13 PM 5:22
 CLERK OF COURT

THIS MATTER came before me for trial on Tuesday, December 11, 2007 in Moncks Corner, South Carolina. Present at the hearing were the Plaintiff, appearing *pro se*, and the Defendants whom were represented by Frederick J. Newton, Esquire.

AT THE BEGINNING of the hearing, the Court noted that no court reporter was present. Upon inquiry by the Court, the Plaintiff stated that she had not retained a court reporter. Mr. Newton stated that he had not retained a reporter, as it is customary for the Plaintiff to procure the reporter. The Court offered to allow Ms. Mills time to retain a reporter, either through continuance for a short time on the day of trial, or by rescheduling the trial to an alternate date. Ms. Mills stated that she wished to proceed without a reporter, and this was agreed to by Mr. Newton.

THIS CASE was brought by Ms. Mills in attempt to have a portion of the lands of the Defendant, Learline Jackson (life estate), adjudicated to belong to Ms. Mills, a property owner of lands contiguous to Mrs. Jackson. Ms. Hudson and Mr. Hyden were made parties to the action because they live in a mobile home on the land in question, and Ms. Mills prayed the Court order them to vacate the land.

ALL OF THE LANDS in controversy in this litigation once belonged to Thomas Jackson. Ms. Mills' grandfather and the father-in-law of Mrs. Learline Jackson. Through various conveyances during

his lifetime, Thomas Jackson conveyed different portions of his lands to various family members, and some to persons outside the family. By virtue of succession after his death the remaining lands passed. Ms. Mills claims ownership of the disputed portion through her father's Last Will and Testament, and through quit claim deed of other heirs to the remaining lands of Thomas Jackson.

THE PLAINTIFF produced a plat by Ashley Land Surveying which was commissioned by Ms. Mills. On the Plat, a 1.207 acre lot of land is designated as "Lot 2 – this portion was mistakenly shown as a part of TMS 180-00-02-017." The Plat states in its Notes portion, "This plat has been done for the use and purpose of the client ascribed and contracted with to perform the requested services. All other parties are subsequently put on notice as to the limited degree of reliance upon this plat by third parties."

THE PLAINTIFF presented as a witness Ms. Olivia Ahrens, an owner of Ahrens & Associates Land Surveying and Real Property Consulting Firm. Ms. Ahrens is not a registered land surveyor, as was not qualified by the Court as an expert witness. She was allowed to testify as what she observed when she went with a site crew to review the site in comparison to the survey produced by Ashley Land Surveying. The testimony proffered offered no facts useful to the Court in determining the ownership of the lands in question.

THE PLAINTIFF also presented as her witness on direct examination Ms. Janet Hudson, one of the Defendants. Ms. Hudson's testimony revealed that she has lived on the property in question for nearly ten years with the permission of Mrs. Jackson, and never asked for permission of Ms. Mills or her predecessor in title, as she considered Mrs. Jackson the owner of the land.

MS. MILLS TESTIFIED that she believes the land in question belongs to her, and she offered as proof the various deeds from Thomas Jackson, and the Last Wills and Testaments of various Jackson family members. She also testified that should the Court find her to be the owner of the parcel titled Lot 2 in the aforementioned survey, that would then give her access to US Highway 17A from her property.

Further, it was revealed that Ms. Mills has had recorded the Plat of Ashley Surveying in the public records of the Register of Deeds for Berkeley County in Plat Cabinet R, at Page 260-A.

MRS. JACKSON, who is in excess of ninety years of age, did not testify, but her son, Mr. Henry Jackson, a remainderman of the property, was called by the defense. Mr. Jackson testified that the land in question had been used by his family all of his life for gardening, and various other uses, including a yard for his mother's house. He further testified that his father had been the one to give the County permission to dig a ditch along the edge of the property as part of the drainage plan for the highway decades ago. Mr. Jackson's testimony of his memory spanning six decades revealed that the lands in question in this litigation have been under the dominion and control of his father and mother for the entire time.

THE COURT qualified Rutherford P.C. Smith, Esquire, as an expert witness presented on behalf of the defense. Mr. Smith testified that he had reviewed the chain of title to lands in question, and in his professional opinion the lands are part of the Jackson lands under the TMS No. 180-00-02-017. Mr. Smith's testimony was both informative and persuasive to the Court. Mr. Smith further testified that it is informative to note that the pins found by Ms. Mills' surveyor supported his opinion of the extent of the lands of Mrs. Jackson. The boundary line upon which Ms. Mills relies to support her contentions was created by her surveyor setting pins. Moreover Mr. Jackson (husband of Learline Jackson) could not have conveyed the lands conveyed to the Mullinax family behind his land if the line was as Ms. Mills suggests.

THE COURT finds wholly for the Defendants and that the lands in question are part and parcel of TMS No. 180-00-02-017, lands of Mrs. Learline Jackson (life estate). This finding is based upon the testimony of all witnesses presented, and the deeds and documents examined by the Court.

FURTHER, the Court finds that even absent the chain of title examined, the lands in question would still belong to Defendant Learline Jackson by virtue of her continuous, hostile (to the claims of the Plaintiff), open, adverse, notorious, and exclusive use, occupation, and/or possession of the land for a period of time exceeding that required for a finding of ownership by adverse possession.

THE COURT FURTHER FINDS that the recordation of the inaccurate Plat commissioned by Ms. Mills constitutes a potential cloud on the title to the lands of Mrs. Jackson, and shall be cancelled of record. ~~Mrs. Mills is hereby ordered to procure and record at her expense and within sixty (60) days of~~

~~the date of this Order, a corrective Plat showing the lands in question in this litigation are a part of Mrs. Jackson's land, TMS No. 180-99-02-017.~~

THE PLAINTIFF'S action is hereby dismissed, with prejudice.

JUDGMENT granted in favor of the Defendants.

AND IT IS SO ORDERED!

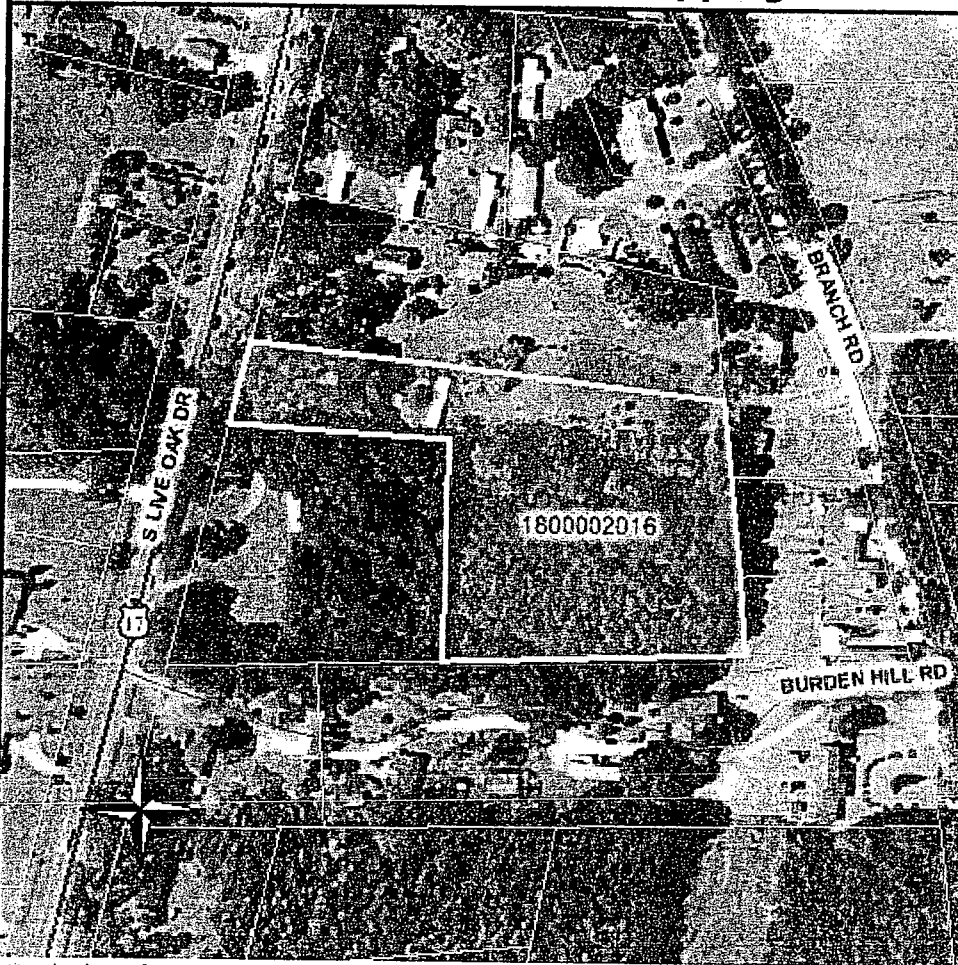
Robert E. Watson

Robert E. Watson
Master-in-Equity for
Berkeley County

Moncks Corner, South Carolina

3-12, 2008

Berkeley County GIS Mapping



Legend

- Parcels
- Streets
- Major Roads
- Site Addresses
- Schools
- NWI
- County Line
- Bonneau
- Charleston
- Goose Creek
- Hanahan
- Jamestown
- Moncks Corner
- St. Stephen
- Summerville



Tuesday, December 11, 2007

Berkeley County GIS 2007

0 0.022mi

The county of Berkeley and its GIS Department disclaims accountability for this product and makes no warranty express or implied concerning the accuracy thereof. Responsibility for interpretation and application of this product lies with the user.

11

201



FLOOD ZONE X.
HAZARD ZONE)
8 0235 C)
1994

BY THE COORDINATE METHOD.

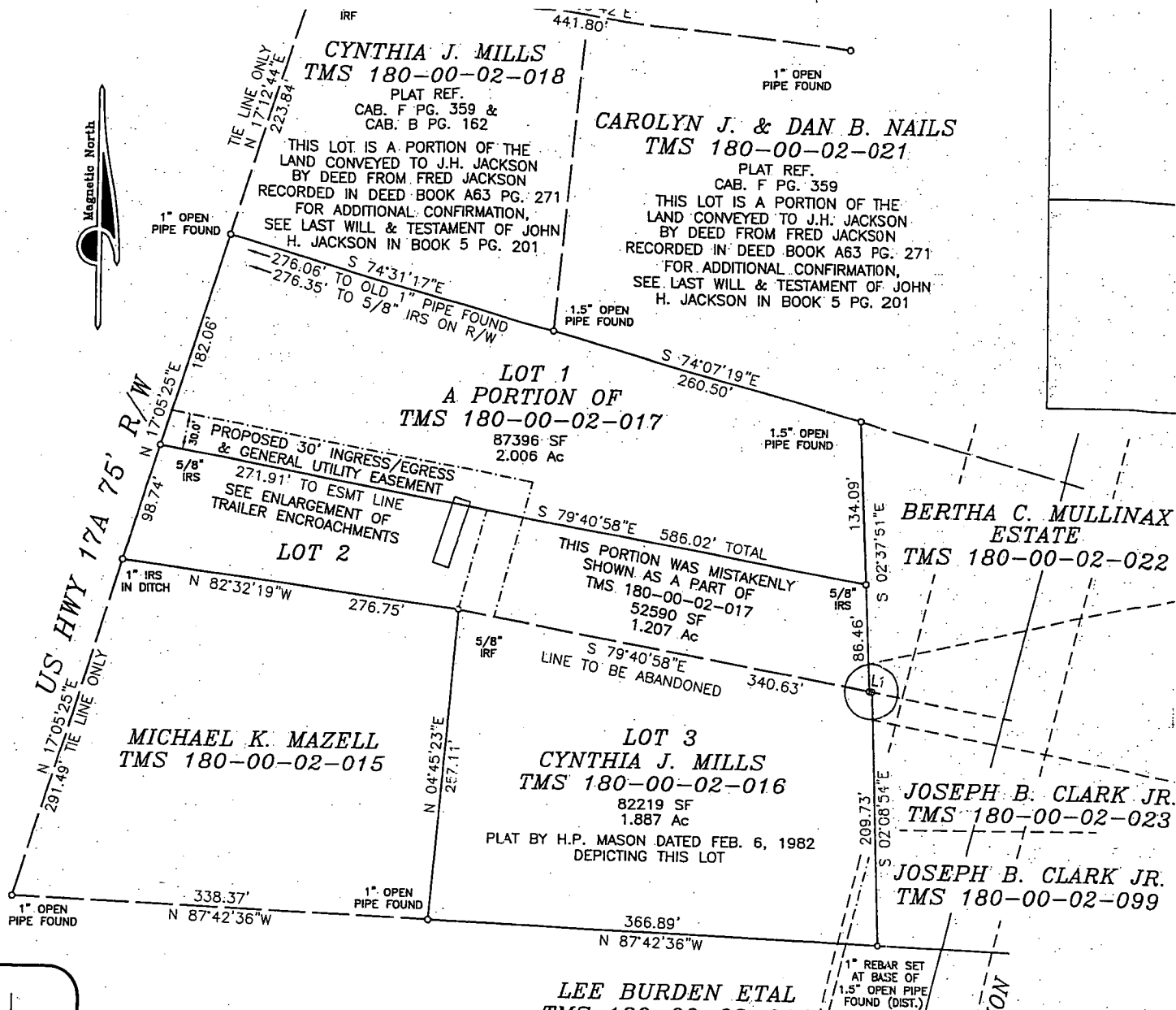
E THE DEFINED BOUNDARY IS FOR
ONLY.

REFERENCED ON THIS PLAT ARE ONLY
Y TO THE ESTABLISHMENT OF THE
PERTY. THEY ARE NOT AND DO NOT
CH:

NE FOR THE USE AND PURPOSE OF
D CONTRACTED WITH TO PERFORM
S. ALL OTHER PARTIES ARE
NOTICE AS TO THE LIMITED DEGREE
PLAT BY THIRD PARTIES.

ARE HORIZONTAL GROUND DISTANCES.

ENVIRONMENTAL INVESTIGATION
PERFORMED BY ASHLEY SURVEYING, INC.
THIS MAP DOES NOT REFLECT THE
PRESENCE OF WETLANDS, CONTAMINATION,
OR OTHER FACTORS WHICH MAY AFFECT THIS PROPERTY.



203

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

CYNTHIA J. MILLS
Plaintiff(s)

vs.

LEARLINE JACKSON, JANET L.
HUDSON & ROBERT R. HYDEN
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2006 - CP - 08 - 2581

(Please Print)

Submitted By: CYNTHIA J. MILLS

Address: 238 HARVEST RD.
MONCKS CORNER, SC 29461

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings, or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650) | | |

Submitting Party Signature: Cynthia J. Mills

Date: 11-28-2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
CASE NO. 2006-CP-08- 2581

CYNTHIA J. MILLS,)
)
PLAINTIFF,)
)
Verses)
)
LEARLINE JACKSON, JANET L.)
HUDSON, ROBERT R. HYDEN)
)
_____)

SUMMONS

1. NON-JURY
2. PROPERTY DISPUTE

2006 NOV 28 PM 3:04
FILED
CLERK OF COURT, SC
BERKELEY COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this Action, a copy of which is herewith served upon you, and to serve a copy of your written Answer to the said Complaint on the subscriber at 238 Harvest Road, Moncks Corner, SC, 29461, within thirty (30) days after service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after service hereof, exclusive of the day of service, judgment by default will be entered against you for the relief demanded in the Complaint.

Given under my hand this 28th day of November, 2006

Cynthia J. Mills

IN THE COURT OF COMMON PLEAS
CASE NO. 2006-CP-08- 2581

COMPLAINT

1. NON-JURY
2. PROPERTY DISPUTE

All that certain piece, parcel or lot of land, situate, lying and being in second St. Johns Parish, Berkeley County, South Carolina, measuring and containing two (2) acres, more or less, and butting and bounding as follows: On the North by lands of Reuben Jackson, formerly a part of the same tract; on the east by the lands of Edward Clark, formerly part of the same tract; on the south by lands of Burden; and on the west by lands of J. W. Adkins, formerly a part of the same tract; being the remaining portion of a tract of land said to contain ten and three tenths (10.3) acres conveyed to Thomas Jackson by D.E. Hill by deed dated January 20, 1923, and of record in the Office of the Clerk of Court for Berkeley County in Book A-51 at page 227, which said ten and three tenths (10.3) acres is said to be shown and delineated and designated as tract no. eleven (11) on a plat of the Barker Tract prepared by McCrady Brothers and Cheves in November 1918, and on record in said Office in Plat Book B at Page 12.

204

3. The Plaintiff is the owner of the above-described parcel of land, situate in the aforementioned County and State.
4. The Plaintiff acquired the aforementioned ownership as a result of her father's Last Will and Testament and by deed and that the Plaintiff's father acquired his interest as a result of a deed issued to him on January 21, 1969, by Annie Jackson Tisdale, Reuben Jackson, Grace Jackson Davis, and Fred Jackson, which individuals had acquired their interests as a result of taking by intestacy through the estates of Thomas Jackson and Ella Jackson, the wife of Thomas Jackson. That these individuals issued their deed as noted earlier which was recorded in the R.M.C. Office for Berkeley County on February 11, 1969, in Book A-194, at Page 79.
5. That the Defendant's have no ownership or interest in the aforementioned parcel.
6. That there are no liens appearing of record or known to the Plaintiff, and no other persons other than the Plaintiff has interest in the said premises as owner or otherwise.
7. That the Plaintiff is entitled to the use and enjoyment of said property which has been denied the Plaintiff by the Defendant's.
8. That the Defendant's actions were willful and wanton with the intent to deprive the Plaintiffs use by placing a mobile home on said property.
9. That it has been necessary for the Plaintiff to employ professional services in this action. Such service is, to a substantial extent, for the common benefit of all persons interested in the premises.

WHEREFORE, the Plaintiff prays judgment against the

Defendant's as follows:

- a. For a Decree quieting ownership of said parcel according to said mentioned documents.
- b. For a permanent restraining order prohibiting Defendant's from interfering with Plaintiff's rights of ownership.
- c. For a order to remove the mobile home from said premises.
- d. For a reasonable allowance of fees for services performed and to be performed for the common benefit of all parties.
- e. For costs and expenses in this action, including expenses and or commissions as the Court may appoint.
- f. For such other relief as the Court may deem just and equitable.


CYNTHIA J. MILLS
Pro Se Plaintiff

28 day of November, 2006

RECEIVED

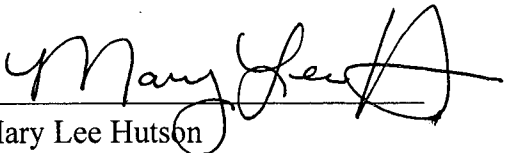
AUG 22 2016

SC Court of Appeals

Certificate of Counsel

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

June 27, 2016



Mary Lee Hutson

Inglese & Associates, LLC

105 Wappoo Creek Dr., Ste. 1-A

Charleston, SC 29412

Ph: 843-277-9785

Fx: 843-353-2523

marylee@ingleseandassociates.com

Attorney for Appellant