

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Opinion No. 2016-UP-137 (S.C. Ct. App. filed March 23, 2016)
Appellate Case No. 2016-001474

Glenda Renee Couram,Petitioner,

v.

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

Defendants,

Of whom Mr. & Mrs. Hooker, Mr. & Mrs. Reibold, Cox & Dinkins, Inc., Fair
Builders/Developers, Inc., Donald "Don" Rawls, and Steven A. Fair in their official
and individual capacities are the.....

Respondents.

RETURN TO PETITION FOR A WRIT OF CERTIORARI
OF RESPONDENTS MR. & MRS. HOOKER and
MR. & MRS. REIBOLD

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COUNTER QUESTIONS PRESENTED

1. Did the Court of Appeals Err in Affirming the Trial Court's Grant of Hooker and Reibold's (the Neighbors') Motion for Declaratory Judgment Concerning the Common Property Line?
2. Did the Court of Appeals Err by Affirming the Trial Court's Grant of the Neighbors' Motion for a Directed Verdict for Slander of Title?
3. Did the Court of Appeals Err by Affirming the Trial Court's Denial of Petitioner's Post-Trial Motion Seeking to Overturn the Jury Verdict in favor of the Neighbors for Trespass?
4. Did the Court of Appeals Err by Affirming the Trial Court's Grant of the Neighbors' Motion for a Directed Verdict for Civil Conspiracy?
5. Did the Court of Appeals Err by Affirming the Trial Court's Court's Grant of the Neighbors' Motion for a Directed Verdict for Invasion of Privacy?
6. Did the Court of Appeals Err by Affirming the Trial Court's Grant of the Neighbors' Motion for a Directed Verdict for Nuisance?
7. Did the Court of Appeals Err by Affirming the Trial Court's Grant of the Neighbor's Motion for a Directed Verdict for Intentional Infliction of Emotional Distress?
8. Did the Court of Appeals Err by Finding Petitioner Failed to Preserve the Issue of Whether the Circuit Court Erred by Excluding Certain Opinion Testimony Offered by Petitioner?

COUNTER-STATEMENT OF THE CASE

This action commenced on March 11, 2011, when Glenda Renee Couram (Petitioner) filed a summons and complaint against Mr. and Mrs. Christopher Hooker, Mr. and Mrs. Carl Reibold (the "Neighbors"), other unknown parties, and Carolina Water Service (CWS). After several filed amended complaints, Petitioner added Cox & Dinkins, Inc. (Cox & Dinkins), Donald "Don" Rawls (Mr. Rawls), Steve Fair, and Fair Builders/Developers, Inc. (collectively "Fair"). Petitioner sought damages against the Neighbors for a boundary dispute, trespass, nuisance, slander of title, invasion of privacy, and intentional infliction of emotional distress. The Neighbors filed a third amended answer and counterclaim on April 26, 2012, denying Petitioner's allegations and counterclaiming for nuisance and intentional infliction of emotional distress. The Neighbors also sought a declaratory judgment determining the location of the property line between their properties and Petitioner's property.

Petitioner purchased her residence at 104 Macaw Lane from Steve Hendrix Builders on March 28, 1994. Petitioner's deed describes her property as Lot 31, shown on a plat prepared for her by Drafts Surveying, Inc., recorded March 29, 1994 in Plat Book 268 at page 12 in the Office of the Register of Deeds ("ROD") for Lexington County (R. pp. 668, 678).

~~Mrs. Hooker~~ purchased the Hookers' property at 120 Toucan Way from Fair on November 2, 2005. Mrs. Hooker's deed describes her property as Lot A shown on a final plat of Wrenwood Subdivision, Phase V, prepared by Cox & Dinkins, recorded in Plat Slide 793 at page 5 in the Office of the Lexington County ROD (R. p. 665, Supp.R. p. 4).

The Reibolds purchased their property on April 14, 2006. The Reibold's deed describes their property as Lot B shown on a final plat of Wrenwood Subdivision, Phase V, prepared by Cox & Dinkins, recorded in Plat Slide 793 at page 4 in the Office of the Lexington County ROD (R. p. 665, Supp.R. p. 4).

Fair purchased the property constituting Lots A and B in 2004 at a tax sale. Wrenwood Subdivision, Phase V acted as common area, a park bordering Petitioner's property, before Fair bought this property (R. p. 374, lines 15-16, p. 375, lines 7-8, p. 677A).

At trial, from July 8, 2013 through July 10, 2013, all parties presented their claims and defenses at a jury trial before the Honorable R. Lawton McIntosh. After Petitioner presented her case, the trial court granted directed verdict motions in favor of Cox & Dinkins, Mr. Rawls, Fair, Mrs. Hooker and Mrs. Reibold on all causes of action alleged by Petitioner (R. p. 432, line 5-p. 446, line 24, p. 454, line 11-p. 459, line 10). The trial court granted directed verdict motions in favor of Mr. Hooker and Mr. Reibold on all causes of action except trespass and nuisance (R. p. 447, line 3-p. 454, line 9).

After the Neighbors presented their case, the trial court granted a directed verdict for all remaining parties (Mr. Hooker and Mr. Reibold, Petitioner) on each party's allegation of nuisance (R. pp. 549, line 23-p. 551, line 13). Petitioner next called Mr. Rawls-as-a-reply witness. After Petitioner directly examined Mr. Rawls, the Neighbors moved to admit Mr. Rawls as an expert witness, which the trial court granted (R. p 567, line 8-p. 568, line 13). Mr. Rawls testified the Cox & Dinkins survey (R. p. 665, Supp.R. p. 4) accurately portrayed the property line between the properties owned by Petitioner and the Neighbors. Using this testimony from Petitioner's witness, and the surveys

admitted into evidence, the trial court granted the Neighbors' motion for a declaratory judgment establishing the property line between the parties using the Cox & Dinkins survey. However, the trial court denied the Neighbors' motion for a directed verdict on Petitioner's trespass cause of action (R. p. 576, line 20-p.578, line 19).

Upon conclusion of the three (3) day trial, the jury returned a verdict for the Neighbors on Petitioner's trespass claim (R. pp. 27-28, p. 643, lines 20-24). The trial court recorded the jury verdict on July 12, 2013 and gave Petitioner ten (10) days to file post-trial motions.

Petitioner filed her post-trial motion on July 19, 2013. Petitioner sought reconsideration of the trial court's grant of Respondent's directed verdict motions, sought to set aside the jury verdict in favor of the Neighbors, and sought a new trial. The trial court denied Petitioner's post-trial motion without the necessity of oral arguments by Order filed August 2, 2013 (R. pp. 29-30).

Petitioner filed her Notice of Appeal on September 3, 2013 (R. pp. 173-174). Petitioner appealed the jury verdict and denial of her post-trial motion. The Court of Appeals affirmed the trial court's rulings and the jury verdict in a *per curiam* opinion filed March 23, 2016. The Court of Appeals denied Petitioner's Petition for Rehearing filed June 13, 2016. Petitioner filed her Petition for Writ of Certiorari on July 13, 2016 with this Court seeking review of the decision rendered by the Court of Appeals.¹

¹ Although Petitioner's filing on July 13, 2016 includes a Certificate of Service stating she served the Petition on July 13, 2016, the envelope in which the Petition was served on Counsel for the Neighbors indicates the envelope was paid for, and mailed to the Neighbors' counsel on July 14, 2016. Petitioner also failed to file the Petition with the Court of Appeals. See Rule 242 (c), SCACR.

ARGUMENT

I. The Court of Appeals Properly Upheld the Trial Court's Grant of the Neighbors' Directed Verdict Motion for Declaratory Judgment as Evidence Proved the Cox & Dinkins Survey Accurately Portrayed the Property Line Between Petitioner and the Neighbors.

The Neighbors answered Petitioner's complaint by filing a counterclaim for a declaratory judgment pursuant to the South Carolina Uniform Declaratory Judgment Act. S.C. Code Ann. §15-53-10, *et seq.* (2012). The Neighbors sought judgment from the trial court setting the boundary line between Petitioner's property and the Neighbors' properties (R. pp. 116-17, paragraphs 52-53).

To state a cause of action under the Declaratory Judgment Act, the moving party must demonstrate a justiciable controversy. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). Justiciable controversies are real and substantial controversies appropriate for judicial determination, as distinguished from a difference of a contingent, hypothetical or abstract character. *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970). Declaratory judgment actions are neither legal nor equitable; therefore, the standard of review depends upon the underlying issues. *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009).

The justiciable controversy between Petitioner and the Neighbors concerned the location of the property line between the parties' real properties. The Neighbors sought the precise location of the property line to determine where to place fences (R. p. 469, lines 14-20, p.521, line 25-p.522, lines 1-2, 7-9).

Petitioner presented testimony from Mr. Drafts, who prepared her survey (R. p. 315, lines 11-13, pp. 668, 678). Mr. Drafts measured Petitioner's western boundary with Macaw Lane at 69.87' (R. pp. 668, 678) and located the corner pin marking Petitioner's

boundary with Hooker's future lot. Mr. Drafts marked the corner pin as "I.P.F. (#4 rebar)" (R. pp. 668, 678). Mr. Drafts also marked a 5' utility easement on Petitioner's lot, a 15' easement on Petitioner's lot, and finally measured the length of Petitioner's southern boundary, marking her property line next to the future locations of Hooker's lot and Reibold's lot, at 149.88' (119.86' plus line L4 which measures 30.02') (R. pp. 668, 678).

Mr. Drafts based Petitioner's plat upon the subdivision plat of Wrenwood Subdivision. This plat states the length of Petitioner's western boundary with Macaw Lane as 69.92' (R. p. 677A). Mr. Drafts compared the three plats introduced into evidence (R. pp. 665, 677-678, Supp.R. p. 4) and found these plats to be accurate to within "a tenth of a foot all the way around" (R. p. 325, line 22-p. 326, line 6), acceptable in surveying for Class B surveys (R. p. 326, lines 7-9).

More importantly, Mr. Drafts did not identify a rebar located fifteen (15') feet inside Petitioner's property (R. p. 319, line 8-p. 320, line 25, R. p. 326, lines 18-21). This fact became the crux of Petitioner's case because she alleged the Neighbors tried to claim this extra fifteen (15') feet as their property (R. p. 372, lines 8-15, R. p. 386, lines 12-14, R. p. 392, lines 18-20, R. p. 414, lines 5-7).

Petitioner also called Mr. Rawls to testify. Mr. Rawls prepared the Cox & Dinkins survey (R. p. 665, Supp.R. p. 4). Mr. Rawls admitted preparing the Cox & Dinkins survey (R. p. 561, lines 21-23), referring to the same subdivision survey relied upon by Mr. Drafts (R. pp. 677-677A). Mr. Rawls opined that the measurements of the two surveys differed by less than 1/2 inch, affirming Mr. Drafts' prior testimony that there was less than an inch difference (R. p. 563, lines 9-14).

Mr. Rawls measured Petitioner's western boundary on Macaw Lane at 69.86', indicating this measurement with the phrase "N 06 25' 27" E 69.86' to 1/2" rebar (o)" (R. p. 665) (emphasis added). The disputed corner pin between Hooker's property and Petitioner's property is marked on the Cox & Dinkins survey as "1/2" rebar (o)" (R. p. 665) (emphasis added). Both Mr. Drafts and Mr. Rawls testified (o) means "old" (R. p. 327, lines 8-10, R. p. 565, lines 11-14). Mr. Drafts also testified that "I.P.F." and (o) mean the same thing (R. p. 328, lines 8-11).

The Neighbors' counsel questioned Mr. Rawls further on his experience (R. p. 566, line 16-p. 567, line 24). The trial court granted the Neighbors' motion to admit Mr. Rawls as an expert witness (R. p. 568, lines 3-13).² As an expert, Mr. Rawls gave his opinion as to the accuracy of the boundary line between Petitioner's property and the Neighbors' properties (R. p. 569, lines 13-23), SCRE 702. Mr. Rawls testified that the southern boundary line (between Petitioner and the Neighbors) measured 80.15' and 69.69' (149.84 feet), and accurately portrayed the property line between the parties' properties (R. p. 569, lines 13-18). Petitioner's southern property line set the boundary line between her property and the Neighbors' properties.

Upon redirect examination by Petitioner, Mr. Rawls testified no measurement or pin could be found that would give anyone cause to believe there would be a fifteen (15') foot or-twenty-(20')-foot discrepancy in the location of the parties' shared property line (R. p. 570, lines 8-23 (left side page 570 on ROA)).

² In contrast, Petitioner tried to get herself admitted as an expert, but could not establish specialized knowledge or expertise R. p. 357, lines 17-25, p. 364, line 1-p.365, line 6). She failed to timely object to her exclusion. On appeal, the Court of Appeals found Petitioner's argument concerning Rules 701 and 702, SCRE unpreserved. Finally, Petitioner listed her same argument in her Petition for Writ of Certiorari, but never raised the argument in her Petition.

The trial court granted the Neighbors a declaratory judgment because Mr. Rawls' testimony, and the surveys, proved the Neighbors owned their properties up to the boundary line as shown on the Cox & Dinkins plat (R. p. 576, lines 11-18). Petitioner objected; however, the trial court reminded Petitioner neither Mr. Rawls nor Mr. Drafts located another iron pin fifteen (15') feet inside Petitioner's property (R. p. 577, line 23-p. 578, line 19) and Petitioner's own witness refuted her assertion of the extra iron pin (R. p. 578, lines 14-16).

The trial court's grant of a declaratory judgment rests in the sound discretion of the court, to be reasonably exercised in furtherance of the Declaratory Judgment Act. *Ott v. Tindal*, 297 S.C. 395, 398, 377 S.E.2d 303, 305 (1988). In this case, the Neighbors proved a justiciable controversy, using Petitioner's witnesses and the parties' surveys. The Neighbors asserted their legal rights to use their properties up to the boundary line and also asserted a positive legal duty denied by the Petitioner (using Petitioner's witnesses). The Court of Appeals held justiciable controversy exists when these factors exist in a declaratory judgment action. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 889 (Ct. App. 2002).

Finally, the trial court correctly ruled on the location of the boundary line between the parties' properties. A boundary dispute is an action at law, and the location of a disputed boundary line is a question of fact. *Bodiford v. Spanish Oak Farms, Inc.*, 317 S.C. 539, 544, 455 S.E.2d 194, 197 (Ct. App. 1995). On appeal of an issue tried without a jury, this Court's jurisdiction is limited to correction of errors at law. *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). Questions regarding credibility and weight are exclusively for the trial judge. The Court will not disturb the trial judge's

findings of fact so long as they are reasonably supported by the evidence. *Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

Each surveyor called by the Petitioner testified to the accuracy of his respective plat (R. p. 326, lines 2-9, p. 563, lines 9-14, p. 564, lines 19-21). Mr. Rawls, introduced as an expert, gave his opinion as to the accuracy of the plat he prepared (R. p. 569, lines 13-18). Both surveyors testified that no fifteen (15') foot discrepancy existed, nor did a new iron pin exist, both claimed by Petitioner. The trial court found Petitioner's own witnesses refuted her claim the Cox & Dinkins plat did not show the correct boundary line.

Accordingly, the Court of Appeals properly upheld the trial court's grant of a declaratory judgment for Hooker and Reibold by establishing the parties' boundary line using the Cox & Dinkins survey (R. p. 665, Supp.R. p. 4). The evidence produced at trial reasonably supported the trial court's findings of fact concerning the boundary line dispute and assisted the trial court in resolving a justiciable controversy by way of a declaratory judgment.

II. The Court of Appeals Properly Upheld the Trial Court's Grant of a Directed Verdict for The Neighbors on Petitioner's Cause of Action for Slander of Title.

The Court of Appeals defines slander of title as a false and malicious statement, oral or written, made in disparagement of a person's title to real property, causing Petitioner injury. *Pond Place Partners*, 351 S.C. at 18, 567 S.E.2d at 890 (Ct. App. 2002).

The elements of the cause of action for slander of title include: (1) the publication of (2) a false statement (3) derogatory to Petitioner's title (4) with malice (5) causing special damages (6) as a result of diminished value in the eyes of third parties. *Huff v. Jennings*, 319 S.C. 142, 148-9, 459 S.E.2d 886, 889 (Ct. App. 1995).

The trial court granted the Neighbors' directed verdict motion on Petitioner's slander of title claim based on the lack of a published statement by either Hooker or Reibold (R. p. 447, line 9-p.448, line 1). Petitioner claims Hooker published a false statement to law enforcement about the property line (R. p. 447, lines 18-22). However, Hooker testified he only spoke with the officer about marking what Hooker believed was his property line (R. p. 474, lines 3-5) (emphasis added). Hooker simply believed he located the rebar marking the corner property line based on the plat (R. p. 665, Supp.R. p. 4) referred to in his wife's deed to their residence (R. p. 466, line 21-p. 467, line 6) so he could build a fence for his young son to play soccer (R. p. 468, lines 15-22).

Hooker could not have published a false statement because he believed he found the rebar marking the corner property line between his property and Petitioner's property. Moreover, this statement cannot be considered malicious because Hooker used recorded documentation to justify his belief that he found the corner rebar indicating the property line. Hooker did not act recklessly or wantonly, or with conscious disregard of Petitioner's rights. Using the definition of actual malice set by this Court in *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 89, 447 S.E.2d 194, 196 (1994), Petitioner cannot show Hooker acted maliciously (or published a false statement).

Regarding Reibold, Petitioner produced no evidence that Reibold published a false statement concerning Petitioner's title to her property. The only evidence offered at trial about Reibold's use of a published statement was the plat (R. p. 665, Supp.R. p. 4) referred to in his property deed (R. p. 518, lines 5-10) so he could determine where to build a fence (R. p. 522, lines 1-9).

Because Petitioner could not show either of the Neighbors published a false statement, which is necessary to prove slander of title as set forth in *Huff, supra*, the trial court properly granted the Neighbors' motion for a directed verdict against Petitioner's claim of slander of title.

In furtherance of her argument for slander of title, Petitioner claimed to suffer special damages. Petitioner claimed she would incur costs to correct her title and remove an illegal rebar, and she incurred costs in legal research, consultation with surveyors, attorney consultation fees and other costs (Appellant's Final Brief, pp. 38-39). However, the only reference Petitioner made to financial loss concerned her alleged inability to refinance her real property (R. p. 400, lines 12-13).³ Petitioner did not provide the name of the lender she used, nor did she provide documentation from her refinancing process or witnesses who could testify as to her alleged losses. Finally, Petitioner provided no corroborating evidence as to other injury or harm she claimed to suffer.

Special damages include impairment of vendibility or value caused by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation. *Huff*, 319 S.C. at 150-1, 459 S.E.2d at 892. While Petitioner alleged special damages, she provided no evidence to prove these damages. Therefore, the Court of Appeals properly upheld the trial court's grant of Hooker and Reibold's directed verdict motion for slander of title not only because neither Respondent published a false statement, but also because Petitioner failed to prove special damages.

³ Petitioner actually refinanced her real property on November 14, 2013. The Lexington County Register of Deeds recorded her mortgage November 22, 2013, in Record Book 16675 at page 335. Her refinance occurred after the trial of this case, after the trial court denied her post-trial motion, and after she filed her Notice of Appeal. Petitioner's ability to refinance her real property shows this could not have been a special damage caused by slander of title.

III. The Court of Appeals Properly Found Petitioner Did Not Preserve Her Claims for Appellate Review Against the Neighbors Regarding Trespass

The Court of Appeals stated Petitioner did not preserve her claims for appellate review in paragraph 2 of its opinion (regarding directed verdicts in favor of Cox & Dinkins, Inc., and Rawls as to Petitioner's trespass cause of action), paragraph 3 of its opinion (regarding directed verdicts in favor of the other Respondents as to Petitioner's civil conspiracy cause of action), and paragraph 5 of its opinion (regarding Petitioner's arguments regarding Rules 701 and 702, SCRE, and her damages). Concerning the Neighbors, paragraph 2 states the Court of Appeals did not consider Petitioner's claim of jury prejudice as to her trespass claim pursuant to Rule 220(b)(2), SCACR.

Petitioner asserts she raised her motion properly pursuant to Rule 59(e), SCRCP. In the conclusion to her post-trial motion, Petitioner sought to overturn the jury verdict and court rulings, but provided no support, either factually or legally, for overturning the verdict in favor of the Neighbors (R. p. 171). The trial court denied Petitioner's post-trial motions without the necessity for oral argument based upon the facts presented at trial (R. pp. 29-30).

Petitioner's final brief claimed trespass by Respondents Cox & Dinkins, Rawls and Fair. (Appellant's Final Brief, pp. 32-34). Petitioner listed facts she alleged against the Neighbors (Appellant's Final Brief, pp. 33-34, R. p. 161), but no error of law concerning the jury's verdict.

Petitioner's request to overturn the jury verdict in favor of the Neighbors should not be considered by the Court because Petitioner failed to preserve this issue for review on appeal. Issues and arguments are preserved for appellate review only when raised to

and ruled on by lower courts. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004).

Should the Court determine Petitioner properly raised the issue of overturning the jury verdict, the Court should deny Petitioner's post-trial motion for new trial. Other than the statement regarding her desire to overturn the jury verdict, Petitioner provided no new evidence or law supportive of her claim. Upon review, a trial judge's order denying a new trial will be upheld unless the order is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002). The Court's review is limited to consideration of whether evidence existed to support the trial court's order.

Petitioner limits her argument for overturning the jury verdict to a claim the evidence did not support the verdict (R. p. 171). The mere argument the verdict is against the evidence is insufficient for this Court to overturn the trial court's ruling of Petitioner's post-trial motion. *Brickman v. South Carolina Railroad Company*, 8 S.C. 173 (1876). Petitioner showed no compelling reason or facts to support overturning the trial court's order denying her motion for new trial. Therefore, the Court of Appeals properly found the trial court acted correctly in denying Petitioner's post-trial motion seeking a new trial. *Folkens v. Hunt*, 300 S.C. 251, 254-5, 387 S.E.2d 265, 167 (1990).

IV: The Court of Appeals Properly Upheld the Trial Court's Verdict Motions Against Petitioner's Causes of Action for Nuisance, Invasion of Privacy, and Intentional Infliction of Emotional Distress

When ruling on directed verdict motions, the trial court must view the evidence and all reasonable inferences in the light most favorable to the moving party. If the evidence only yields one inference, a directed verdict in favor of the moving party is

proper. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 476, 514 S.E.2d 126, 130 (1999).

A. The Court of Appeals Properly Upheld the Trial Court's Grant of a Directed Verdict as to Petitioner's Nuisance Cause of Action

Petitioner alleged the Neighbors created a private nuisance. The traditional concept of private nuisance requires Appellant to demonstrate the Neighbors unreasonably interfered with ownership and possession of her land. *Ravan v. Greenville County*, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct. App. 1993). A nuisance is anything that hurts, inconveniences or damages; anything that essentially interferes with the enjoyment of life or property. *O'Cain v. O'Cain*, 322 S.C. 551, 562, 473 S.E.2d 460, 466 (Ct. App. 1986) (citing *Strong v. Winn-Dixie Stores, Inc.*, 240 S.C. 244, 253, 125 S.E.2d 628, 632 (1962)).

Appellant's nuisance claims against Hooker concern his efforts to locate the corner pin marking the corner of his property line between his property and Appellant's property. In fact, Appellant admitted Hooker had as much right to the corner pin as she did (R. p. 412, lines 17-24).

Appellant's nuisance claims against Reibold concern his cutting of dead tree limbs and vines located close to the property line between Reibold's property and Appellant's property (R. p. 38, lines 16-21, p. 519, lines 4-11, p. 525, lines 9-21, p. 541, lines 14-22, p. 542, lines 9-19, Supp. R. p. 5). However, not every annoyance or disturbance of a landowner constitutes a nuisance. People living in organized communities must of necessity suffer some inconvenience and annoyance from their neighbors and must submit to reasonable annoyances consequent upon the reasonable use of property by others. *O'Shea v. Lesser*, 308 S.C. 10, 18, 416 S.E.2d 629, 633 (1992).

The trial court accurately pointed out the parties only engaged in a “classic land dispute” (R. p. 550, line 25). The complaints Appellant had against the Neighbors, and the Neighbors had against Appellant, stemmed from each party’s belief in the location of the property line between their properties. Because each party’s belief was not unreasonable, the Court of Appeals properly upheld the trial court’s grant of a directed verdict dismissing the nuisance case against each party.

**B. The Court of Appeals Properly Upheld the Trial Court’s Grant
of a Directed Verdict as to Petitioner’s Invasion of Privacy
Cause of Action**

The Supreme Court specified three distinct causes of action for invasion of privacy: (1) the unwarranted appropriation or exploitation of one’s personality; (2) the publicizing of one’s private affairs with which the public has no legitimate concern; or (3) the wrongful intrusion into one’s private activities, in such manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. *Swinton Creek*, 334 S.C. at 478, 514 S.E.2d at 130.

In this case, Petitioner made no claim the Neighbors used her name, likeness or identity for publication or profit, or publicized her affairs.

Wrongful intrusion into private affairs consists of four elements Petitioner must plead and prove: (1) an intrusion, which may consist of watching, spying, prying, overhearing, or other similar conduct which must be decided on the facts of each case; (2) into that which is private, meaning the intrusion on Petitioner must concern those aspects of herself and her home which she would normally expect would be free from exposure by the Neighbors; (3) which is substantial and unreasonable enough to be legally cognizable, meaning the Neighbors must act in a fashion that would cause mental injury to persons of

ordinary feelings and intelligence in similar circumstances, and (4) intentional, meaning the Neighbors must have acted willingly, desiring the outcome of their conduct, or should have known the result would follow from their conduct. *Snakenburg v. Hartford Casualty Insurance Company, Inc.*, 299 S.C. 164, 171-2, 383 S.E.2d 2, 6 (Ct. App. 1989).

The evidence proved Hooker located an iron pin he believed marked the corner of the property line between his property and Petitioner's property (R. p. 301, lines 12-18, p. 474, lines 3-5). Reibold only removed dead limbs and choking vines, and killed snakes (R. p. 523, lines 2-10, p. 525, lines 9-21). Petitioner did not testify to or provide proof the Neighbors spied on her or exposed her communications to third parties. The trial court found Petitioner lacked evidence supporting her action for invasion of privacy (R. p. 433, lines 2-12).

Petitioner's lack of evidence and her failure to prove Hooker and Reibold published anything about her private affairs support the trial court's decision to grant a directed verdict in favor of the Neighbors on Petitioner's cause of action for invasion of privacy. Accordingly, the Court of Appeals properly upheld the trial court's grant of the Neighbors' directed verdict motion as Petitioner failed to provide evidence to show the Neighbors committed any invasion of privacy.

**C. The Court of Appeals Properly Upheld the Trial Court's Grant
of a Directed Verdict as to Petitioner's Cause of Action for
Intentional Infliction of Emotional Distress**

This Court expressly defined the tort of intentional infliction of emotional distress, or outrage, in *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776 (1981). To recover damages for this tort, the *Ford* Court held the moving party must establish: (1) the Neighbors intentionally or recklessly inflicted severe emotional distress, or were

certain, or substantially certain that such distress would result from their conduct; (2) the conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the Neighbors caused Petitioner's emotional distress; and (4) the emotional distress suffered by Petitioner was so severe that no reasonable person could be expected to endure it. *Id* at 162, 276 S.E.2d at 778.

The Court in *Ford* also stressed the heightened burden of proof set forth in the second and fourth elements of the tort of intentional infliction of emotional distress. *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 358-9, 650 S.E.2d 68, 71 (2007). This heightened standard means Appellant cannot prove her case with mere bald assertions. *Id* at 358, 650 S.E.2d at 72. Without corroborating evidence to prove unreasonableness, or abusive conduct by the Neighbors, or the severity of Petitioner's emotional distress, the trial court's directed verdict in favor of the Neighbors is proper. *Rhodes v. Security Finance Corporation of Landrum*, 268 S.C. 300, 302, 233 S.E.2d 105, 106 (1977). Petitioner's allegations of emotional distress and damage resulting from the Neighbors' conduct include pain suffered from a blood clot in her leg (R. p. 393, lines 8-15), traveling to Wal-Mart and the library to avoid the Neighbors (R. p. 398, lines 2-3, 7-9), cutting her grass at 7:00 a.m. to avoid the Neighbors (yet she also testified the blood clot rendered her unable to walk) (R. p. 398, lines 15-17) and panic or anxiety attacks (R. p. 399, lines 9-11). Petitioner made these assertions, yet provided no corroborating evidence, whether from medical records or third party testimony to support her claims.

Using the standard set in *Hansson*, Petitioner cannot rely solely on her assertions of emotional distress. Petitioner must present supporting evidence to show

severe emotional distress. Further, the supporting evidence must also show the Neighbors triggered Petitioner's severe emotional distress. The trial produced no evidence besides Petitioner's allegations; therefore, the Court of Appeals properly upheld the trial court's grant of the Neighbors' directed verdict motion on Petitioner's cause of action for intentional infliction of emotional distress.

**V. The Court of Appeals Properly Upheld the Trial Court's
Directed Verdict Motion Against Petitioner's Civil
Conspiracy Cause of Action.**

At trial, Petitioner maintained her conspiracy claim concerned Fair, Mr. Rawls and Cox & Dinkins (R. p. 413, lines 9-11). Petitioner admitted the conspiracy issue "was not with Reibold and Hooker" (R. p. 413, line 13). The only evidence Petitioner provided concerning discussions between the Neighbors and third parties consisted of her testimony that she watched the Neighbors speak with Officer Creech after Petitioner called law enforcement for a third consecutive evening on December 16, 2010 (R. p. 385, lines 20-22) and her testimony that Reibold called Fair, "because Mr. Fair showed up" (R. p. 378, lines 6-8).

Civil conspiracy consists of three elements: (1) a combination of two or more persons (2) for the purpose of injuring Petitioner, and (3) causing special damages. *City of Hartsville v. South Carolina Municipal Insurance & Risk Financing Fund*, 382 S.C. 535, 677 S.E.2d 574, 579 (2009). Petitioner must prove all three elements in order to recover damages for civil conspiracy. *Pye v. Estate of Fox*, 369 S.C. 555, 566-7, 633 S.E.2d 505, 511 (2006).

After admitting her civil conspiracy claim did not involve the Neighbors (R. p. 413, line 13), Petitioner tried to claim the Neighbors committed a civil conspiracy because

they worked together to take twenty (20') feet of her property (R. p. 431, lines 20-22). Petitioner produced no evidence that the Neighbors worked together to take her property. In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. *Island Car Wash, Inc., v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987).

Finally, Petitioner produced no evidence of special damages in her case against the Neighbors. In her Petition, Petitioner alleges special damages similar to what she alleged in her Brief. Petitioner made these assertions, yet provided no corroborating evidence, to support her claims. The trial court granted a directed verdict in favor of the Neighbors because Petitioner provided no evidence to show the Neighbors conspired against her or caused Petitioner special damages. Because Petitioner could not prove special damages, her conspiracy action against Hooker and Reibold must be barred. *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989).

Using these standards, and Petitioner's own admission her civil conspiracy claim did not involve the Neighbors, the trial court and Court of Appeals correctly upheld the Neighbors' motion for directed verdict in their favor on the civil conspiracy claim.

VI. In Her Petition, Petitioner Presents No Special, Important or Constitutional Issue for this Court to Grant Review of the Court of Appeals' Opinion

A writ of certiorari will be granted only where there are special and important reasons. Rule 242(b), SCACR. The character of reasons the Supreme Court considers when it chooses to review a final decision of the Court of Appeals includes (1) where there are novel questions of law; (2) there is a dissent in the Court of Appeals' decision;

(3) the decision of the Court of Appeals is in conflict with a prior Supreme Court decision; (4) substantial constitutional issues are directly involved; and (5) a federal question is included and the Court of Appeals' decision conflicts with a decision of the United States Supreme Court. *Id.*

This case arises from a disputed property line between neighbors, a “classic land dispute” (R. p. 550, line 25). Petitioner added claims for damages against all Respondents (R. pp. 87-105). Respondents received judgments in their favor at trial (R. pp. 27-28, 432-463, R. p. 576, lines 11-15, R. p. 643, lines 20-25—R. p. 644, lines 1-4). Nothing in the litigation suggests novel questions of law, federal questions or constitutional issues (*See* R. pp. 217-647).

Petitioner only appealed to the Court of Appeals regarding the trial court's grant of a declaratory judgment, directed verdict grants, and evidentiary rulings (*Couram v. Hooker, et al*, Op. No. 2016-UP-137, S.C. Ct. App. filed March 23, 2016). Petitioner's appeal raised no federal questions, constitutional issues, or novel questions of law. *Id.* The Court of Appeals issued a *per curiam* opinion, unpublished, with no dissent, affirming the trial court's rulings and judgments. *Id.* The Court of Appeals' opinion includes no dissent, nor conflicts with a prior decision of the Supreme Court. *Id.*

Despite making no arguments or citing any constitutional precedent, Petitioner makes a brief reference in her Statement of the Case to constitutional violations. Petitioner never raised these constitutional issues to a lower court; therefore, these issues are not preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Even if Petitioner properly raised these issues, she never argued these sufficiently to preserve the issues for appeal. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*,

348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore are not presented for review. *State v. Jones*, 392 S.C. 647, 655, 709 S.E.2d 696, 700 (Ct. App. 2011).

Because Petitioner lists no special or important reasons for this Court to grant review of the Court of Appeals' opinion, this Court should deny Petitioner's Petition for Writ of Certiorari.

VII. Petitioner Failed to Comply with South Carolina Appellate Court Rules

A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals. Rule 242 (c), SCACR. The Court of Appeals denied Petitioner's Petition for Rehearing *en banc* by order dated June 13, 2016. Pursuant to Rule 242 (c), SCACR, Petitioner's Petition for Writ of Certiorari became due for service to opposing counsel and both the Clerks of the Court of Appeals and Supreme Court on or before July 13, 2016. *See id.*

Petitioner filed and served her Petition for Writ of Certiorari on July 13, 2016 according to her Proof of Service. However, the envelope in which she served the Neighbors' counsel indicates that she paid postage and mailed the Petition to the Neighbors' counsel on July 14, 2016 (*See attached Exhibit "A"*).⁴ Petitioner also failed to

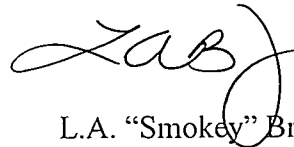
⁴ The Neighbors' counsel filed a Motion to Dismiss Petitioner's Petition for Writ of Certiorari on August 10, 2016, including the original envelope in that Motion as Exhibit "A."

serve the Clerk of the Court of Appeals with her petition and proof of service.⁵ Therefore, this Court should deny Petitioner's Petition for Writ of Certiorari because Petitioner failed to comply with the South Carolina Appellate Court Rules.

Conclusion

For the reasons stated above, this Court should uphold the Court of Appeals' decision affirming the trial court's grant of a directed verdict for the Neighbors on the Petitioner's causes of action for civil conspiracy, slander of title, nuisance, invasion of privacy and intentional infliction of emotional distress. This Court should also uphold the Court of Appeals' affirmation of the trial court's grant of a declaratory judgment in favor of the Neighbors setting the boundary line between their properties and Petitioner's property using the Cox and Dinkins plat (R. p. 665, Supp.R. p. 4). Finally, the Court should also uphold the Court of Appeals' decision to affirm the jury's verdict in favor of the Neighbors concerning the Petitioner's trespass claim.

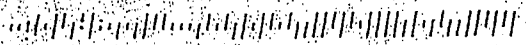
Respectfully Submitted,



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Attorney for Respondents Mr. &
Mrs. Hooker and Mr. & Mrs. Reibold

Dated this 15th day of August 2016

⁵ On August 15, 2016, before leaving counsel's office to file this Return, counsel's runner delivered a letter dated August 11, 2016, from Petitioner, who served the Clerk of the Court of Appeals with her Petition, after counsel for both the Neighbors and Cox and Dinkins and Rawls filed Motions to Dismiss Petitioner's Petition for Writ of Certiorari.

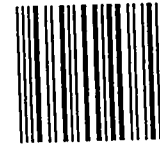


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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Opinion No. 2016-UP-137 (S.C. Ct. App. filed March 23, 2016)
Appellate Case No. 2016-001474

Glenda Renee Couram,Petitioner,

v.

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

Defendants,

Of whom Mr. & Mrs. Hooker, Mr. & Mrs. Reibold, Cox & Dinkins, Inc., Fair Builders/Developers, Inc., Donald "Don" Rawls, and Steven A. Fair in their official and individual capacities are the

Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Return to Petition for a Writ of Certiorari of Respondents Mr. & Mrs. Hooker and Mr. & Mrs. Reibold by depositing a copy of this in the United States Mail, postage prepaid, on August 15, 2016, to the attorneys and *pro se* litigants listed below:

August 15, 2016

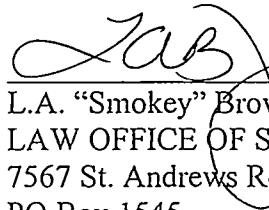
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Donald "Don" Rawls

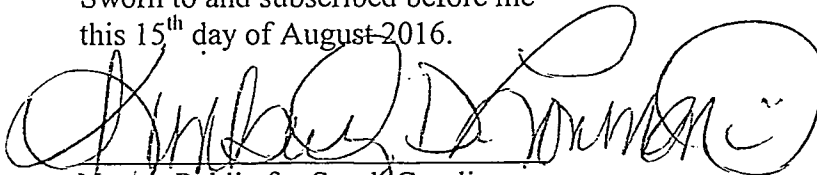
Steven A. Fair
Fair Builders/Developers
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Attorney for Respondents Mr. & Mrs.
Hooker and Mr. & Mrs. Reibold

Sworn to and subscribed before me
this 15th day of August-2016.



Notary Public for South Carolina

My Commission Expires: 10-1-21

