

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

The Honorable Dale Van Slambrook, Master-in-Equity

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Appellate Case No. 2015-002175

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Cynthia Jacqueline Jackson Mills,

*Appellant,*

v.

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

*Respondents.*

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**PETITION FOR REHEARING**

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This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing. Rule 240 governs motions and petitions generally.

This Court issued its decision on February 7, 2018. *See* Op. No. 2018-UP-070. Appellant understands that this Court deliberated on this matter and issued its opinion. The appellant nevertheless respectfully believes the opinion should be withdrawn and reversed. The following is a list of specific points the Court may have overlooked or misapprehended. Appellant also wishes to incorporate all of her arguments from briefing in order to preserve those arguments for later review.

- I. The Court may have overlooked the fact that the trial court imposed a higher burden of proving “strict necessity” than what the law requires.

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In finding Appellant failed to prove strict necessity, the trial court inserted its own standard instead of the one imposed by law. Specifically, the court presumed strict necessity required a showing that “circumstances surrounding the [conveyance] must be so substantial and obvious that the grantee and his successors could never deny that the grantor had no other choice but to cross the grantee’s land.” (Order Denying Motion, p.6). This is not what our case law requires. Instead, a showing of “[o]nly reasonable necessity is required,” which means “the easement must be more than merely convenient, but it does not need to be absolutely essential.” *Morrow v. Dyches*, 328 S.C. 522, 529, 492 S.E.2d 420, 424 (Ct. App. 1997). The trial court’s own standard imposes upon Appellant the heightened burden of showing the easement is absolutely essential, which our courts have explicitly rejected.

The trial court’s basis for this rationale is the fact pattern of *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375 (1927), where the interior property was surrounded by a river. While *Brasington* provides an example of an instance in which a finding of easement by necessity is appropriate, it should not be read to exclude such a finding upon the facts of this case. Here, just like in *Brasington*, the grantor retained the interior tract for himself and had no other means of access, except through the property that the grantor previously conveyed away. Whether the interior property is surrounded by other real property or surrounded by water is a distinction without significance—both properties are landlocked.

- II. The Court may have overlooked the fact that Appellant currently has no means of obtaining an easement to access her property, other than upon the property of Respondents.

In its opinion, this Court cites *Morrow* for the proposition that the doctrine of strict necessity “provides reasonable access to the dominant estate when there is none; it does not

provide a means for ensuring a preferred method of access to a particular portion of a tract when access to the tract is otherwise available.” 328 S.C. at 529, 492 S.E.2d at 424. Presumably, the Court’s decision was premised on the belief that there are multiple access points upon which an easement could be placed but Appellant merely desires to obtain an easement through the property of Respondents. This is not the case.

As the Court’s unpublished opinion does not flesh out the details behind its citation to this case law, Appellant can only assume the basis for the Court’s reliance on this case stems from the following finding by the trial court: Respondents presented evidence “that there is a county[-]maintained dirt road a short distance to the south of Plaintiff’s property with high ground in between.” (Order Denying Motion p.6). It is undisputed that to access the dirt road mentioned by the trial court, Appellant would need an easement across the property to her south. However, this property was never a part of her grandfather’s lands and belongs to strangers, and thus, no unity of title can be established. *See Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002) (“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.”). There is no way for Appellant—or the courts—to ever require the owner of that property to grant an easement for Appellant’s use. *See, e.g.*, S.C. Const., Art. I, § 13.

To the extent the Court relied on the fact that Appellant did not attempt to procure an easement across lands to the west or east, this too could not be accomplished under the circumstances. The necessity could not have been created when those properties were conveyed. *See Boyd v. Bellsouth Tele. Tele. Co.*, 369 S.C. 410, 420, 633 S.E.2d 136, 141 (2006) (stating the necessity element must exist at the time of the severance). Instead, the necessity arose when Thomas Jackson conveyed the property to Ruben Jackson in 1935 because that conveyance left

Thomas Jackson's remaining property landlocked. Thus, it is Ruben Jackson's property that can support the creation of an easement by necessity, not the lands to the east or west that were previously conveyed.

III. The Court may have overlooked the fact that Appellant demonstrated strict necessity at the time of the 1935 conveyance.

The trial court found Appellant failed "to provide evidence of the circumstances surrounding the 1935 conveyance that demonstrated a strict necessity for Thomas Jackson's property to have the access easement across [Ruben Jackson]'s property and nowhere else." (Order Denying Motion, p.6). However, there is no dispute that the 1935 conveyance rendered Thomas Jackson's residual tract completely landlocked and without any other access. Given this fact, the necessity was created at that time.

The trial court seems to confuse the many cases where a property has access on multiple sides, but the owner seeks an easement by necessity for an alternate path. In those cases, the court will consider facts and circumstances of the properties in question, on the basis that "[t]he necessity . . . must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible." *Boyd*, 369 S.C. at 420, 633 S.E.2d at 141. In this case, Appellant has *no other access* to her property because it is completely landlocked, surrounded on all other sides by the property of strangers. This has been the case since 1935.

IV. Conclusion

The Court chose not to rule on Appellant's remaining issues, pursuant to *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). While Appellant does not address those issues in her Petition for Rehearing, she relies on the arguments asserted in her briefs for the purposes of this Court's decision to grant rehearing.

Appellant asks this Court to grant the Petition for Rehearing and issue an opinion reversing the trial court.



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March 1, 2018

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APPEAL FROM BERKELEY COUNTY  
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Appellate Case No. 2015-002175

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**PROOF OF SERVICE**

The undersigned hereby certifies that on March 1, 2018, she served counsel for Respondent with the *Petition for Rehearing* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

Patrick R. Watts, Esquire  
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Respectfully submitted,



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March 1, 2018

The Honorable Jenny Kitchings  
Clerk of South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: *Cynthia Jacqueline Jackson Mills v. Janet Lynne Hudson, Henry Russell Jackson, and Mildred Jackson Hudson*  
Appellate Case No. 2015-002175

Dear Ms. Kitchings:

Enclosed please find the original and one copy of Appellant's Petition for Rehearing and a self-addressed envelope. Please return a clocked copy of the Petition. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



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Enclosure

Cc: Patrick R. Watts