

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-29-00694

John Challis, Jennifer Challis,)
Robert Baust, Aarik Eberhardt,)
Amy Eberhardt, James English,)
Socheata Koy, Carl Flatau, Patrice)
Flatau, Jonathan Hardin, Maia)
Hardin, Jay Hurley, Joanne Hurley,)
Mike Nickel, James Seidel, Deborah)
Seidel, Elizabeth Yegge, Aaron)
Beauchemin, Kerry Beauchemin,)
Bryan Strawbridge, Jenelle)
Strawbridge, Zachery Tanous,)
Fiona Tanous, Michael Mullane,)
Karen Mullane, Andrew Crawford,)
Ashley Crawford, Jeff Welch, and)
Cara Welch,)

Plaintiffs,)

vs.)

Jeffery Horning and Janet)
Shander-Horning,)

Defendants.)

FILED
OFFICE OF CLERK
OF COURT
LANCASTER, SC
2018 FEB 28 AM 11:41

RECEIVED
MAR 29 2018
SC Court of Appeals

This matter was referred to me for trial of an action in which Plaintiffs seek a declaratory judgment and other relief as to their rights to use an ingress/egress easement in Bridgehampton Community where they all live. The Defendants are also residents of South Carolina and live in Bridgehampton.

PERTINENT FACTS

Bridgehampton is a residential community in northern Lancaster County developed by homebuilder John Wieland Homes and Neighborhoods, Inc. It lies on the border of North Carolina and South Carolina and is bisected by the state line. For purposes of this matter,

C.P.D.

Bridgehampton is divided into two areas – the greater Bridgehampton community and Karriker Court.

The developer, John Wieland Homes, established the easement in question (“Easement”) in 2004 during development of the Bridgehampton Subdivision when an area known as Karriker Court was added to the Subdivision. A paved walkway (“Walkway”) was erected by the developer within the Easement for pedestrian traffic. The Easement is the only pedestrian connection between Karriker Court and the other portions of Bridgehampton. The swimming pool, tennis courts, clubhouse and other primary amenities for the subdivision, which are located in the greater Bridgehampton Community, were built in the earlier years of the development of Bridgehampton before the addition of the Karriker Court section.

The Easement is located entirely on Lot 659 which was owned by the developer in 2004 when the Easement was established by the filing of Plat 2004-60. It is 7.5 feet wide and extends the length of Lot 659 for 187.41 feet. One terminus of the Easement is at the public road cul-de-sac, Norwalk Lane. The other terminus of the Easement is at the sidewalk that connects Karriker Court to the rest of the subdivision. The developer had the right during the construction phase to add such other sections to the subdivision which were adjacent to the subdivision. The developer also maintained the right to make such modifications to the plans by the addition of roads, easements or other rights of way under the Protective Covenants for Bridgehampton recorded June 15, 1999, at Deed Book 49 at Page 52 before construction on the subdivision began. The language of the Covenants assures these improvements to be available to all residents of the subdivision.

CWD

After the recording of Plat 2004-60 which established the Easement the developer sold Lot 659 to Alain Jendly and Catherine Jendly. The Jendlys owned the lot until 2011. In 2011, the Jendlys sold the lot to the Defendants.

During 2013 and 2014, Lancaster County constructed Harrisburg Road Elementary School directly across Harrisburg Road from Karriker Court. After the School opened, traffic along the Walkway increased significantly. Defendants then erected a gate across the Easement and posted signs stating usage of the Easement was limited to Karriker Court residents only.

PROCEDURAL HISTORY

The Plaintiffs commenced this action in May 2015. A hearing on cross motions for summary judgment was held before the Honorable Brian Gibbons. On October 23, 2015, Judge Gibbins issued an Order granting partial summary judgment for the Plaintiffs on the issue of the validity of the Easement stating in pertinent part "There is no basis for disputing the existence of an easement. The Easement was created by the developer John Wieland Homes by depicting it on a plat showing the Bridgehampton subdivision." *See Order Granting Partial Summary Judgment.* That Order further precluded the use of the Easement for access to Harrisburg Elementary School (the "School") until final resolution of the case.

On May 24, 2016, I entered a Temporary Order requiring Defendants to remove all signs posted on the gate posts on the Easement and prohibited the use of motorized traffic on the Easement pending further Order. Further, I determined that Judge Gibbon's Order precluding use of the Easement for access to the School should remain in effect.

This matter was originally tried before me on May 24, 2016. At that time, Defendants were represented by D. Randolph Whitt and Plaintiffs were represented by Philip E. Wright. On August 17, 2016, I issued the Amended Order of the Special Referee, which resolved all matters

before me. In that Order, I determined that Plaintiffs could use the Easement for all legal purposes, including access to the School:

Defendants appealed that Order. On February 16, 2017 Adam L. Horner was substituted as counsel for Defendants with the Consent of all Parties. On January 19, 2017, Defendants filed a motion for leave to file a motion for relief from the Amended Order of the Special Referee with the South Carolina Court of Appeals. Defendants' motion for leave was granted on March 6, 2017. On March 27, 2017, Defendants filed a Rule 60(b) Motion for Relief from Order. Thereafter, Plaintiffs consented to the relief requested in Defendants' Motion for Relief from Order and Defendants consented to Plaintiffs' request to substitute certain Plaintiffs. Based on the consent of the Parties and my review of the file, I granted Defendants Rule 60(b) Motion for Relief from Order and Plaintiffs' Motion to substitute Parties and the matter was reopened for limited discovery and a new Trial. From the date of my Amended Order until the new trial, Plaintiffs and other residents of Bridgehampton used the Easement to access the School.

On January 11, 2018, a trial was held in which both parties submitted evidence and presented arguments. Based on the evidence presented I issue this Order as the final Order in this matter. As described in more detail below, the issues to be determined by this Court were the scope of the Easement and based on this Court's finding as to scope whether the Easement is being overburdened by the current usage. Defendants also sought a determination that they had no actual or constructive knowledge of the Easement and therefore it was not appurtenant their property. Said another way, Defendants contended that the Easement did not run with the land. However, as set forth below, I determined that issue had previously been resolved and therefore should not be considered at trial. Defendants offered a proffer at trial in which they submitted deeds in the chain of title and testified that they did not have actual knowledge of the Easement.

c wD

RELEVANT CASE LAW

The Plaintiffs contend that the language on the plat establishing the easement is clear and unambiguous. The easement is for "ingress and egress." There are no other words of limitation or definition. Defendants contend that the easement is ambiguous as it fails to define the servient or dominant estate, fails to specify ingress/egress to and from any locations, and makes no other determinations regarding proper usage.

In *Smith v. Commissioners of Public Works of City of Charleston*, 312 S.C. 460, 466 (Ct. App. 1994), the Court of Appeal reviewed an express easement set forth in an easement agreement. The Court determined that the language of the easement was ambiguous and determined that "if the language is uncertain or ambiguous in any respect, all surrounding circumstances, including construction which the parties have placed on the language, may be inquired into and taken into consideration by the court." The Court further held "[t]he general rule is that the character of an express easement is determined by the nature of the right and intention of the parties creating it." Finally, the Court, citing an earlier case, held that "an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated."

FINDINGS OF FACT

Based on the preponderance of evidence presented at trial, I find the following Findings of Fact:

- a. The Walkway has been in existence within the Easement since 2004. The Walkway has been used, at least as late as 2011, by residents of Bridgehampton as a means to get from Karriker Court to the remainder of Bridgehampton.

CWD

- b. The owners of the homes on Karriker Court are members of the Bridgehampton Community and the Homeowners Association. As such, they are entitled to all the amenities in Bridgehampton. Members of the Community, both residents of Karriker Court and other parts of the subdivision, used the Walkway for ingress and egress to various points in the Community.
- c. The language of the Easement is unclear and ambiguous in multiple respects.
- d. The primary purpose of the Easement was to ensure that Karriker Court residents have access to the amenities of the subdivision. A secondary purpose of the Easement was to ensure the walkability of the subdivision.
- e. The easement was not intended to access the wider world, including the School that was not built until some years after the Easement was granted.
- f. The Easement, and in particular the Walkway, runs very close to Defendants' home – specifically close to bedrooms and at least one bathroom.
- g. During the 2016-2017 school year, the Easement was being used by a significant amount of pedestrians from 6:45-7:30 a.m. – sometimes more than 100 people in a morning.
- h. Young children used the Easement unaccompanied by a parent creating safety concerns in the use of the Easement for school access.
- i. Usage of the Easement to access the School exceeds the Easement's scope and overburdens the Easement.
- j. As of the time of Trial, the existence of the gate and gate posts placed across the Easement by Defendants chills the rights of the residents of Bridgehampton to free access and use of the easement.

CWD

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, I make the following Conclusions of Law.

- a. Defendant's Answer to Amended Complaint appears to admit the existence of an Easement. Further the original Trial before me was conducted on the premise that an easement exists against the Horning's Property. Defendant's Post Trial Motion did not dispute the existence of an easement. Judge Gibbon's Order Granting Partial Summary Judgment states in pertinent part that "[t]here is no basis for disputing the existence of an easement. The Easement was created by the developer John Wieland Homes by depicting it on a plat showing the Bridgehampton subdivision." Accordingly, I determine that the existence of an easement appurtenant to Defendants' property was already established as the law of the case and therefore I did not need to reach a decision on that issue.
- b. The language of the Easement is unclear and ambiguous and it is proper for me to consider evidence of the developer's original intent, as grantor of the Easement, when determining the scope of the Easement.
- c. The Defendants submitted the testimony of Andrew McCoy by submitting his deposition, without objection by Plaintiff's counsel.
- d. The original intent of the Easement was to allow the residents of both sides of the subdivision to access amenities and other homes within the entire subdivision.
- e. The use of the Easement to go to the school is contrary to the original intent in granting the easement.
- f. The use of the Easement to access the school constitutes an overburdening of the Easement.

CWD

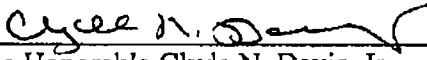
- g. The existence of a fence or gate is an unnecessary impediment to the use of the Easement.

WHEREFORE, IT IS ORDERED THAT:

1. The easement is limited in scope to use only by residents and their guests for pedestrian and bicycle travel to and from areas within the subdivision. The Easement shall not be used by any person as access or a thoroughfare to areas outside of the subdivision except as may be used by residents to enjoy walking or bicycling outside of the community purely for recreational purposes. This exception shall not be read to allow residents or their guests to use the Pathway to access any location outside of the community including, but not limited to, schools, commercial establishments, or non-community private residences
2. No person shall use the Easement except as specifically allowed in this Order.
3. Plaintiffs are hereby permanently enjoined from using the Easement for access to the School or for any reason other than those consistent with Paragraph 1 above.
4. To the extent the side posts of the gate currently located on the property are located within the Easement they shall be permanently removed.
5. Defendants shall not impede any person's right to use the Easement consistent with this Order.
6. No motorized or electric vehicles shall be used in the Easement except motorized or electric wheelchairs necessary for mobility.
7. Defendants are not responsible for maintaining the Easement. The Defendants shall not prevent reasonable and necessary maintenance of the 7.5 foot wide Easement.

CWD

8. Violations of this Order shall be subject to the Contempt powers of this Court.



The Honorable Clyde N. Davis, Jr.

Lancaster, South Carolina

Dated: February 20, 2018