ELECTRONICALLY FILED - 2018 Apr 23 9:11 AM - OCONEE - COMMON PLEAS - CASE#2016CP3700344

STATE OF SOUTH CAROLINA COUNTY OF OCONEE June H. White, as Operating Member of Chauga Creek Retreat, Plaintiff, vs. Marilyn Green, Defendant, June White, individually and as Owner/Operator of Mountain Rest Campground, William M. White, Individually and as Owner/Operator of Hilltop Bike Park, James Edward (Ed) Walker, Third Party Defendants.	IN THE COURT OF COMMON PLEAS Case No.: 2016-CP-37-0344 **ORDER**

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SC Court of Appeals

This matter was heard as a non-jury trial on February 27, 2018, before the Honorable Perry H. Gravely. Counsel for all parties stipulated that the trial would be bifurcated and that this initial hearing would be solely for the purpose of determining whether an easement exists across the Defendant Marilyn Green's ("Green") property and the second portion of the trial, if necessary, would be for the determination of any issues raised by the Defendant's counterclaims/cross-claims including the assessment of damages sustained by the Defendant.

The first question is to determine whether an easement exists across property owned by Defendant Green located on the east side of Highway 28 (hereinafter "subject property"). At the trial, the Plaintiff called James Hart, who was qualified as an expert witness in surveying and who had also been involved with subdividing this property in 1992. The Defendant called

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Randall Miller, a registered surveyor, who had also been involved in surveys of the subject property. All witnesses testified about the existence of a road which had gone by several different names ("Homeland" and "Nichols"). The Defendant introduced aerial photographs dating back to 1951 showing the road in question. Both surveyors testified about the existence of an easement/road along the south side of the subject property. A summary of relevant evidence introduced at trial is as follows:

1) Plat of Issaqueena Ridge (5/28/92) designates southern property line of subject property as center line of "30' street" (Pl. Ex. 2);

2) Plat of Watkins (3/23/92) shows a road to the south of the subject property (Pl. Ex. 3);

3) Plat of Audy Nichols (12/1/61) shows southern property line as center line of road (Pl. Ex. 7);

4) Deed into Ella Mae Nichols, defendant Green's predecessor in title, references 1961 plat (Part of Pl. Ex. 7);

5) Plat of McDaniel shows boundary line of subject property as "30' street" (Pl. Ex. 8);

6) Plat of Ross (10/16/00) shows southern boundary as center line of "Nichols Lane" and "30' Easement-15' each side of property line". (Pl. Ex. 4);

7) Deed to Defendant Marilyn Green references the Ross plat and states that "this conveyance is made subject to any and all recorded rights-of-way, easements....and is further subject to any of the foregoing which may appear from an inspection of the premises." (Part of Pl Ex 4).

All plats referenced above clearly delineate the existence of an easement, road or street along the southern boundary of the subject property. Thus, the Court finds that the evidence of a road and/or easement is overwhelming if not uncontroverted and was specifically referenced in the

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deed to Defendant Green (Pl. Ex. 4). Defendant Green had notice of the existence of the road/easement by virtue of the numerous recorded documents showing the easement/road and as would have been evident from an inspection of the property as shown by the aerial photographs introduced by the Defendant.

The real issue is the location of the road/easement and the rights of the various parties in connection with the road/easement. Defendant Green took title to the subject property by deed from Deutsche Bank National Trust Company, et.al. (Deed book 1676 at Page 91-92-Part of Pl. Ex. 4). This deed specifically references the plat prepared by Surveyor Miller for Ross (also a part of Pl. Ex. 4). This plat clearly shows the location of the roadway in reference to the Defendant's house and fence. Based on the testimony of Miller, who was called by the Defendant, and other witnesses, as well as a review of all the evidence, the Court finds that this properly sets out the location of the road/easement which is a "30' easement" with 15 feet on Defendant's side of the property, and according to said plat, the Defendant's "fence" appears to be the boundary line on the back portion of the lot.

Finally, the Court must determine the rights of the various parties. "An easement is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed." Snow v. Smith, 416 S.C. 72, 85, 784 S.E.2d 242 (Ct.App. 2016) (quoting Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582 (2009)). "When the language in a plat reflecting an easement is capable of more than one construction, the construction that least restricts the property will be adopted." Id. (citing Tupper v. Dorchester Cty., 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997). "Although the rights of the easement owner are paramount to those of the landowner as to the easement, the easement owner's rights are not absolute but are limited, so both the owners of the easement and the servient tenement may have

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reasonable enjoyment." Id. "The owner of an easement has all rights incident or necessary to its proper enjoyment but nothing more." Id.

Here, the deed conveying the property to Ms. Green does not specifically mention the easement; it only references the plat prepared by Surveyor Miller for Ross. Based on the testimony at trial, the road appears to have been used by the Defendant, the Plaintiff, and the Plaintiff's customers for ingress and egress. Therefore, the easement is limited to ingress and egress for the Plaintiff; the Defendant; and the Plaintiff's members, guests, and invitees to their respective properties.

Furthermore, in the absence of an agreement, the owner of the servient tenement is under no duty to maintain and repair an easement for the benefit of the dominant tenement. Hayes v. Tompkins, 287 S.C. 289, 337 S.E.2d 888 (Ct.App. 1985). Ordinarily the owner of the dominant tenement has the duty to keep the easement in repair. Id. However, when both the owner of the dominant tenement and the owner of the servient tenement use the property subject to the easement, such as a gravel road, a court may equitably divide the responsibility for maintenance and repair, and may take into account such factors as the dominant tenement's duty of maintenance and repair, the burden of the easement on the servient tenement, and the extent of the servient tenement's use. Id. In this case, the Plaintiff uses the easement to ingress and egress for its individual enjoyment as well as for its invitees, members, guests, and renters. The Defendant, on the other hand, only uses the easement to ingress and egress from her own property. The Plaintiff owns the dominant tenement and the Defendant owns the servient tenement, which is burdened by the easement. Therefore, equity dictates that the Plaintiff be responsible for the repair and maintenance of the easement. This ruling applies only to the easement as it relates to this case – as shown on Plaintiff's Exhibit 4 (Plat Book A784 at Page 1).

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Therefore, in light of these findings, the Court orders as follows:

1) That an easement exists as set forth above;

2) That Defendant Green is prohibited from obstructing the right of way leading to the Plaintiff's property and it is ordered that Defendant cease harassing, stalking, bothering or obstructing the Plaintiff or its members, invitees, guests, or renters; further, Defendant Green must remove all obstacles from within the easement as designated above; and the Defendant may not replace any obstructions or barricades therein; and

3) The Plaintiff shall be responsible for appropriate maintenance of the easement across the subject property.

AND IT IS SO ORDERED.

_____
Perry H. Gravely
Presiding Judge

_____, South Carolina
_____. 2018

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Oconee Common Pleas

Case Caption: June H-Member White , plaintiff, et al VS Marilyn S Green , defendant, et al

Case Number: 2016CP3700344

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

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May 23, 2018

VIA FIRST CLASS MAIL and FACSIMILE:
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211
Attn: Jenny Kitchings

RE: June White as Operator Member of Chauga Creek Retreat vs. Marilyn Green and Third Party Defendants

Dear Ms. Kitchings:

Enclosed please find a Copy of the Order that was not attached to the Notice of Appeal that was mailed earlier today to your office. This is the same document that I sent to you on today's date via facsimile.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact our office.

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Sincerely,

Roberta Barton SC Bar No. 81110
Roberta Barton Law Ltd. Co.
Attorney for the Appellant

enc.
cc: Mr. Robert K. Whitney, Esquire
Mr. James Edward (Ed) Walker
Mr. William M. White

Roberta Barton Law, Ltd. Co.
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