

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Michael Stehney, Jr.,

Plaintiff,

v.

Ronald E. Ferguson, Susan M. Ferguson,  
and Ronald J. Ferguson,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

CA No. 2013-CP-23-01715

ORDER

**RECEIVED**

JUL 09 2018

SC Court of Appeals

DATE OF TRIAL: ..... April 24, 2018  
 PRESIDING JUDGE: ..... The Honorable Charles Simmons  
 PLAINTIFF'S ATTORNEY: ..... Chace Campbell  
 DEFENDANT'S ATTORNEY: ..... Pro se  
 COURT REPORTER: ..... Danette Hanks

---

This matter came before me at trial on April 24, 2018. The initial action was commenced by the filing of a Summons and Complaint on March 22, 2013, in the Office of the Clerk of Court for Greenville County. The Defendants proceeded pro se and interposed their Answer and Counterclaims on April 22, 2013.

1. The Plaintiff was present at the hearing and was represented by Chace Campbell of the Greenville County Bar. The Defendants Ronald E. Ferguson and Susan M. Ferguson were present and represented themselves, pro se. Ronald J. Ferguson was also present, however due to the Court's previous Order dated November 29, 2017, granting Plaintiff's motion for Adverse Inference, Ronald J. Ferguson was prohibited from participating in the defense of the case or any of the affirmative relief requested.

2. Prior to the commencement of the trial, the Court held a hearing on Plaintiff's Motion to Quash Defendant's subpoena, which was filed on April 13, 2018, and filed shortly after Defendants served their subpoena on him requiring Mr. Campbell to be a witness at trial.

Defendants sought to have Mr. Campbell testify against his own client, Michael Stehney, as to his contact with the Army Corps of Engineers since 2013. After hearing arguments from Chace Campbell and Ronald E. Ferguson, the Court granted Plaintiff's motion. First, the Court held that Mr. Campbell could not be required to testify against his own client at trial. Second, the Court held that the information sought by Defendants was considered attorney work product and was information that the Defendants could have easily gleaned through other sources. Third, the Court ruled that the subpoena and related issues were untimely since the lawsuit has been pending since 2013 and this issue was only raised by Defendants on the eve of trial.

3. The Court took testimony from the Plaintiff, Mr. Ronald E. Ferguson, Dr. Robert Hanley, Paul Jones, and Kirsten Robinson. Additionally, the Court heard testimony from Brian Rosenthal, David Knowles, Harold Moon, and Mark Schaefer.

4. The Court heard the arguments of the parties, testimony from Plaintiff, Mr. Ronald E. Ferguson, and the above-named witnesses, and reviewed the multitude of exhibits presented at trial, and now makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. The Plaintiff, Michael Stehney, Jr. lives at 100 Mill Creek Road, Piedmont, South Carolina in the Mill Creek Estates Subdivision. Plaintiff's home has a small pond on the back of his property. The pond was stocked with fish, geese, and ducks purchased by the Plaintiff and which were part of the quiet enjoyment of his property.

6. The Defendants, Ronald E. Ferguson and Susan M. Ferguson own land directly across the street and uphill from the Plaintiff at 103 Mill Creek Road, Piedmont, South Carolina.

7. On or about November 2012, Defendants began to develop their property by grading

their land. Defendants graded their land themselves, which included the removal of trees, grass and shrubbery on the land, thus exposing large areas of raw dirt and done in preparation for construction of their residence on the property.

8. Defendants had failed to take the proper precautions to properly direct the silt and mud run-off from their property to other neighboring properties, specifically Plaintiff's property located at 100 Mill Creek Road. Due to Defendant's failure to take the proper precautions and properly direct the water running off their property, the silt and mud run-off from Defendant's property entered onto Plaintiff's property and was deposited into his pond.

9. The Court finds that based on the testimony of Dr. Hanley and Kirsten Robinson of Greenville County Soil and Water Conservation District, that Plaintiff's pond on his property was legal and did not violate any federal or state ordinances, codes and/or statutes.

10. In developing their land, Defendants had a duty to use reasonable and due care in the development of their land so as not to cause harm, damage, or disturbance to the Plaintiff's property and/or to the Plaintiff's quiet enjoyment of his property. Defendants further had a duty to comply with all applicable code requirements, which they did not.

11. In South Carolina, there are three basic rules governing the disposal of unwanted surface water: (1) the common law or common enemy rule, (2) the civil law rule, and (3) the reasonable use or modified civil law rule. Under the common law rule, surface water is regarded as a common enemy. It is clear that the "common law" and "common enemy" rules are the same rule. *Lucas v. Rawl Family Ltd. P' Shp* 359 SC 505, 598 S.E.2d 712.

12. It is well established that South Carolina follows the common enemy rule with respect to the diversion of surface waters naturally flowing across land. *Baltzeger v. Carolina Midland Ry. Co.*, 54 SC 242, 247-48, 32 S.E. 358, 360 (1899); *Johnson v. Phillips*, 315 S.C. 407, 412, 433

S.E.2d 895, 898 (Ct. App. 1993) The rule allows a landowner to treat surface water as a common enemy and dispose of it as the landowner sees fit. Glenn v. School Dist. No. Five of Anderson County, 294 S.C. 530, S.E.2d 47 (Ct. App. 1988), There are, however, two exceptions. First, the common enemy rule is subject to the law of nuisance and an individual may not obstruct or alter the flow of water to create a nuisance per se. Johnson v. Phillips, id at 414. Second, except by contractual or prescriptive right, an upper landowner may not, by means of a ditch, impoundment or other artificial structure, collect surface water on his own land and cast it in a concentrated form upon lower adjoining land. Johnson v. Phillips, id at 414, 433 S.E.2d at 899.

13. In this case, it is clear that the "common law" and "common enemy" rules are substantially the same rule. Further, there is ample evidence that Defendants' construction on their property prevented surface water from being absorbed into the soil and drastically increased the flow of water onto Plaintiff's land, causing it to run off into Plaintiff's pond. The Defendants had an obligation under the common enemy rule, not to allow the silt, mud run off, and surface water from their property to enter onto Plaintiff's property.

14. In failing to properly direct the mud and silt run-off from the development of their land, Defendants also failed to comply with code and permit provisions by the Greenville County Land Development Division. Further, Defendants graded their property themselves without a permit, and were given notice by Greenville County and subsequently fined for being found in violation for failing to comply with the requirements of the Greenville County Stormwater Management Ordinances.

15. The Court finds that the run-off of mud and silt from Defendants' property, as established

through multiple witnesses and photographs, proximately caused Plaintiff's pond to become discolored and contaminated, causing the loss of wildlife, including fish, ducks and geese who populated the pond.

16. Based on the testimony of David Knowles with Greenville County, the Court has declined to find that Defendants' entire defense of this case has been frivolous. However, many of the tactics used by Defendants in this matter have been made simply to delay this case. As evidenced by this Court's own Order, dated November 29, 2017, the Court stated:

"The record is clear, that Defendants have delayed the progress of this case at every turn via repeated delays in responding to discovery requests, filing of numerous motions and briefs, two groundless removals and appeals. It took three Court Orders directing Ronald J. Ferguson to appear for a deposition, only to have him finally do so and refuse to answer any questions by invoking the Fifth Amendment, including basic questions such as date of birth."

Therefore, a hearing will be held on the Plaintiff's Motion for Sanctions for what costs the Court will order the Defendants to reimburse the Plaintiff for their actions in delaying this matter and driving up unnecessary costs.

17. The Court orders, based upon the testimony and evidence presented, that the Plaintiff be awarded Twenty-Six Thousand Five Hundred Dollars (\$26,500.00) for the cost to refurbish and restore the pond back to the condition it was in previous to it being contaminated with silt and mud runoff, as well as \$5,000.00 to offset governmental fees and charges related to such restoration. While Plaintiff has sought pre-judgment interest for any damages ultimately awarded, the Court declines to award the same, finding such amounts of damages were not able to be determined until the time of trial.

NOW, THEREFORE, BASED UPON THE FOREGOING:

IT IS ORDERED, ADJUDGED AND DECREED, that the Defendants are found jointly and severally liable to the Plaintiff for damaging his pond; and it is further Ordered, that the

Defendants pay restitution to the Plaintiff in the amount of Twenty-Six Thousand Five Hundred Dollars (\$26,500.00) for the cost to refurbish and restore the pond back to the condition it was in prior to it being contaminated with silt and mud runoff; and Five Thousand Dollars (\$5,000.00) to the Plaintiff to offset any and all costs to be incurred by the Plaintiff to obtain the proper permits with the County and Army Corps of Engineers to restore the pond to its previous condition. Post-judgment interest shall accrue at the statutory rate.

Finally, in the event that this Order is appealed, the trial court requests that the appellate court endeavor to enter a final decision and not remand this matter to the trial court based upon the long and arduous manner and time it took to ultimately have the case tried.<sup>1</sup>

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

---

<sup>1</sup> During the course of this lawsuit, Defendants have appealed orders by the various judges on multiple occasions, as well as, at least twice, removing the case to Federal Court. Despite the multitude of appeals and removals, Defendants have not prevailed in any venue.



Greenville Common Pleas

**Case Caption:** Michael Stehney Jr vs. Ronald E Ferguson , defendant, et al

**Case Number:** 2013CP2301715

**Type:** Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2018-05-17 16:46:22 page 7 of 7