THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2016-CP-10-1560
Appellate Case No. 2017-002546

CARPENTER BRASELTON, LLC, ... Appellant,

vs.

ASHLEY ROBERTS, JEREMY COOK, and
SALAHEDDINE EZZAOUDI, ... Respondents.

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT

A. Appellant validly appealed the issue of the Master's consideration of extrinsic evidence and thus the Respondents' argument that it failed to preserve the issue for appeal is without merit.

Respondents have attempted to complicate Appellant's simple argument that the Master improperly considered extrinsic evidence in concluding that the language: "LOTS C-2, C-3, C-4 & C-5 FOR AGRICULTURAL USE ONLY; NOT TO BE USED FOR BUILDING PURPOSES" was *not* a valid restriction on the Plat in this case. Appellant was not required to file a motion to alter or amend that ruling despite Respondents' insistence that it should have. The Master stated that he was not relying on extrinsic evidence in concluding in the final written order that lots C-2, C-3, C-4 and C-5 did not meet current minimum health department standards for a modified conventional sub-surface disposal system, but that when they did that the lots could be used for building purposes. (Order, R. at pp. 16-17.) However, for the reasons stated in Appellants initial brief, and those herein, it is clear that the Master did, in fact, rely on extrinsic evidence even if the order states he did not.

Respondents cite Parker v. Shecut, 340 S.C. 460, 531 S.E.2d 546 Ct. App 2000), 349 S.C. 226. 562 S.E. 2d 620 (2002), for the proposition that when an order is claimed to be internally inconsistent, that inconsistency must be raised to the trial court by way of a post-trial motion before it is preserved for appellate review. Id. In Parker, the plaintiff tried to raise an argument at trial that an agreement among heirs merged into deeds of distribution and thereby extinguished the previous agreement among the heirs. Id. In that case, the Master refused to allow the plaintiff to raise the issue at trial and the plaintiff failed to challenge the issue by post trial motion. Parker is a very different case than the one before this Court. Here, the Appellant appealed the central issue in the litigation—the consideration by the Master of extrinsic evidence to interpret the

meaning of an unambiguous notation on the Plat. The present case is also distinguishable from Parker in that Appellant has not made any argument that the Master made an oral ruling that he later contradicted in a written one. The statements that the Master made orally and in his written order are consistent and it is the written order that is being appealed.

Respondents' citation to Grant v. South Carolinas Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995), in which the appellant failed to review the order prepared by opposing counsel prior to its entry, is also misplaced. Likewise, Pelican Bldg. Ctrs. Of Horry-Georgetown, Inc. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993) stands for the same proposition as that in Parker and is inapplicable to the case at bar, as is Dowd v. Imperial Chrysler-Plymouth, Inc., 298 S.C. 439, 381 S.E.2d 212 (Ct. App. 1989).

B. The Master erred in concluding that the notations were placed on the Plat by Charleston County as it is not evident that the notations were placed on the Plat as part of the Charleston County approval process and any relation to availability of sewer and septic unless the Master considered extrinsic evidence.

Respondents argue that the Master only looked to the four corners of the Plat to conclude that the notations on the plat do not create a valid restriction, that the notations on the Plat were placed there by Charleston County as part of their approval process, and that the notations were related to the availability of water and sewer. (Respondents Brief, p. 20). Respondents emphasize that Charleston County "placed these notations on the Plat as part of its approval process" and "[a]fter all, the Plat is stamped approved as an 'approved final plat' by Charleston County, with the associated planning board number." (Respondents Brief, p.22). These points are meaningless, as all plats must be approved by the County. If anything, the fact that it is a final plat begs the question of why the restriction in question does not provide a caveat to allow for future building if a septic system is obtained if Respondents interpretation is the correct one. If

Lots C-2 through C-5 were not to be permanently restricted, and the restriction was placed on the Plat by the County, then the County should have so indicated. The Master must have relied upon extrinsic evidence, in some form, to conclude that the County made the notations at issue and that they are connected to water and sewer approval.

Respondents contend that "the other notations including the notations in question are in the same or similar typeface as those notations that were without question placed on the Plat by Charleston County." Id. The typeface of the remaining parts of the Plat are much different tha[n] [sic] the notations on the plat in question." Id. If one looks at the typeface of the language at issue in this case, "LOTS C-2, C-3, C-4 & C-5 FOR AGRICULTURAL USE ONLY; NOT TO BE USED FOR BUILDING PURPOSES", it *does not* look like the language the County placed on the Plat as to Lot C-1 or otherwise. Respondents would like to convince the Court that the language is obviously similar but it simply is not.

C. Respondents fail to sufficiently address Appellant's argument that subsequent purchasers of land are entitled to rely on recorded deeds and plats to determine their rights with respect to property.

Appellant relied on the recorded deeds and plats in this case when it purchased Lot C-5 and when it also purchased the horse farm adjacent to lots C-2, C-3 and C-4, the lots of the Respondents. (R. p. 29). In its brief, Appellant presented a thorough analysis of several cases supporting the significance of restrictive language located in a recorded plat description referenced by a deed, including Murrells Inlet v. Ward, 378 S.C. 225 (Ct. App. 2008). Respondents ignore the Murrells case entirely. In Murrells, an easement was created when the landowner subdivided a large tract of land in an effort to allow her children to live and enjoy the property. Id. at 228. Though Ward admitted she provided the fifty foot right-of-way road access pursuant to Horry County Zoning and Planning Regulations, she argued that the surveyor

erroneously included the easement in the plat, and that she never intended for this use. Id. The thrust of the Court of Appeals holding there was that "[s]ubsequent purchasers are *entitled to rely on recorded deeds and plats* to determine their rights in respect to property." Id. (emphasis added). Respondents, like Ward, cannot now argue what their intentions were at the time of the subdivision of the land because it would be relying on extrinsic evidence and, as in Ward, it would be unfair to deny a subsequent purchaser the right to use the easement since it "relied on the recorded plat when it purchased [the lot]" and since the "dedication of the private easement was complete when Ward originally conveyed the lot." Id.

In the case at bar, Appellant purchased Lot C-5 in reliance upon the recorded Plat at issue in this case and the restrictions set forth in it, including the one that restricted the use of the lots to agricultural use. Thus, it would be unfair to deny Appellant the right to the benefit of the restriction it relied on when purchasing lot C-5.

CONCLUSION

For the reasons stated, and for those in the Appellant's Initial Brief, this Court should reverse trial court's Order granting summary judgment to the Respondents.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

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