

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUL 20 2018

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
Unpublished Opinion No.: 2018-UP-211
(S.C. Ct. App. Filed May 16, 2018)

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A. Duncan.....Respondent,

v.

Roy Drasites and Elizabeth DrasitesPetitioners.

PETITION FOR WRIT OF CERTIORARI

James Randall Davis
DAVIS | FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512
ATTORNEYS FOR PETITIONERS

Lexington, South Carolina
July 19, 2018

Other Counsel of Record:
Michael W. Tighe
George A. Taylor
P. O. Box 1390
Columbia, South Carolina 29202
(803) 404-6900
Attorneys for Respondent

INDEX

Petitioners Certificate of Counsel	3
Questions Presented	3
Statement of the Case	3
Statement of Facts.....	5
Respondent’s Chain of Title.....	5
Petitioners’ Chain of Title.....	7
Applicable Law Cases.....	13
Legal Analysis.....	15
Arguments.....	15
I. Easement Does Not Clearly State Purpose.....	15
II. Easement Has No Access to Lake Murray.....	16
III. Prior Use of Easement.....	17
IV. Easement Was for Access to Road.....	17
Conclusion	19

CERTIFICATE OF COUNSEL

Counsel for Petitioners certify that there was an unpublished opinion of the S.C. Court of Appeals in this matter filed May 16, 2018 and the Petition for Rehearing by Petitioner was denied by the S.C. Court of Appeals on June 22, 2018.

QUESTIONS PRESENTED

1. **DID THE S.C. COURT OF APPEALS ERR IN NOT FINDING THE PURPOSE OF THE EASEMENT WAS TO GAIN ACCESS TO A DIRT ROAD SHOWN ON A PLAT OF WOODTRAIL SUBDIVISION WHICH ROAD ALLEGEDLY CONNECTED TO JOHNSON MARINA ROAD?**

2. **DID THE S.C. COURT OF APPEALS ERR IN FINDING THE EASEMENT RIGHT OWNED BY THE RESPONDENT GRANTED HIM THE RIGHT OF INGRESS, EGRESS AND ACCESS TO LAKE MURRAY, INCLUDING BY VEHICLE TOWING LIGHT WATER CRAFT?**

STATEMENT OF CASE

Respondent, Hamilton Duncan, filed his Summons and Complaint on September 23, 2013. By Consent Order dated June 19, 2014, Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan was added as a Respondent in this action. Also by Consent Order dated June 19, 2014, Respondent was granted leave to amend his Complaint. In his Amended Complaint, Respondent seeks an injunction enjoining the Petitioners and their agents from obstructing or otherwise interfering with the Respondent's right-of-way easement and from unreasonably discouraging prospective buyers; and to dismantle and remove rip rap, water pipe(s) and other obstructions blocking Respondent's right-of-way easement. Respondent also seeks an Order declaring (a) that the easement extends to the edge of Petitioners' Property; (B) that Respondent is entitled to maintain the Easement in such a way that it will be traversable by vehicle towing a watercraft and enable Respondent to launch the watercraft from the easement. In their Answer, Petitioners admit the existence and origin of the Easement. Further answering the Petitioners' allege that the termination point of the Easement is the location point described in said easement as it was on execution date of the easement grant (July 28, 1976) and that with

an express easement, Respondent cannot unilaterally expand or change the specific provisions in the easement.

A merits hearing was held on this matter on April 28, 2015. Appearing at the merits hearing were the attorneys of record, Petitioner Roy Drasites, Tommy C. Boozer, Manager of SCE&G's Lake Murray Shoreline Management Program representative, Carl W. Bostick, Dennis G. Johns, and Larry W. Smith, all three are South Carolina registered land surveyors.

On July 29, 2015, The Honorable Joseph M. Strickland, Richland County Master-in-Equity filed his Order indicating the following:

- a. The easement burdens the entire length of the Drasites Property;
- b. The purpose of the Easement is for ingress, egress, and access to Lake Murray;
- c. Included within the Respondent and his successors-in-title rights to use the easement, is the right to vehicular use of the easement, including by vehicle towing and hauling light watercraft;
- d. Respondent and his successors in title are entitled to maintain the Easement in such a way that will allow use of the Easement, including the vehicle towing and launching light watercraft; to the extent Respondent, or his successors in title, perform such maintenance, it shall be at their expense; and
- e. Petitioners are hereby enjoined from discouraging any prospective purchasers of the Duncan Property.

On August 10, 2015, Petitioners served their Motion to Alter or Amend the Court's Order filed July 29, 2015. The Honorable Joseph M. Strickland filed his Order denying Petitioners' Motion to Amend on December 4, 2015. Order read as follows, "This matter before the Court is

a Motion to Alter or Amend Judgment submitted by James Randall Davis, Esquire attorney for the Petitioners. The motion is denied.”

On January 8, 2016, Petitioners filed and served their Notice of Appeal with the South Carolina Court of Appeals. On May 16, 2018 the South Carolina Court of Appeals issued its decision affirming the ruling of the Master. On May 31, 2018, the Petitioners filed a Motion to Reconsider. On June 22, 2018, the Court of Appeals issued its decision denying the Petitioners’ Motion to Reconsider.

STATEMENT OF FACTS

Petitioners and Respondent own property in the same subdivision in Richland County. Petitioners’ property abuts Respondent’s property on the Southeastern side. Respondent has a twenty (20’) foot wide easement that parallels the Southeastern boundary of Petitioners’ property.

Respondent and Petitioners’ chain-of-title are shown.

RESPONDENT’S CHAIN OF TITLE

By Deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 147, Woodberry Utilities, Inc. conveyed to Jay Clark Case (see *Respondent’s Trial Exhibit 15*) (*R. p. 194*)) the following one acre tract:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina, being shown and designated as a one acre tract on a plat prepared for R. J. Marsh, Inc. by Douglas E. Platt, Sr. dated March 25, 1976, and to be recorded: Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road #S-40-2265 whereon it measures 208’ feet; On the Southeast by property now or formerly of SCE&G Co. whereon it measures 208’ feet; On the Southwest by lands of Woodberry Utilities, Inc. whereon it measures 208’ feet; On the Northwest by lands of Woodberry Utilities, Inc. whereon it measures 208’ feet; be all measurements a little more or less.

The origin of the easement at dispute in this case is deed dated July 28, 1976 and recorded August 3, 1976 in Deed Book D393 at Page 150 (the "Easement Deed"), wherein Woodberry Utilities, Inc. conveyed to Jay Clark Case (*see Respondent's Trial Exhibit 1*) (*R. p. 166*) a non-exclusive right of ingress and egress over a twenty (20') foot strip of land. The Easement Grant reads as follows:

"A non-exclusive right of ingress and egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray."

Jay Clark Case then deeded to A. Charles Craft, III and Manita B. Craft (*see Respondent's Trial Exhibit 14*)(*R. p. 191*)) the property by deed dated December 15, 1995 and recorded December 19, 1995 in Deed Book 1293 at Page 668 wherein he also conveyed the following Easement Grant:

"That certain non-exclusive easement for ingress and egress over a 20 foot strip from the above described property to the 360 contour of Lake Murray, said easement is described in that certain deed to Jay Clark Case from Woodberry Utilities, Inc. recorded in the Office of the RMC for Richland County in Deed Book D393 page 130 and shown on the Plat prepared for Jay Clark Case by Site Consultants and recorded in the Office of the RMC for Richland County in Plat Book 52 page 1316.

The Site Consultants plat referenced in the deed from Jay Clark Case to Mr. and Mrs. Craft is dated April 25, 1988. *See Respondent's Trial Exhibit 18* (*R. p. 199*).

By General Warranty Deed dated June 28, 2002 and recorded in the Office of the Register of Deeds for Richland County in Deed Book 680, Page 383, A. Charles Craft, III and Manita B. Craft conveyed a fee simple interest to Respondent and his wife, Christine A. Duncan in 1312 Silver Point Road, Chapin, South Carolina 29036, more particularly described as follows (the "Duncan Property"):

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing .99 acres, more or less, shown and designated on a plat prepared for Jay Clark Case by Site Consultants dated April 25, 1988, and recorded in R. M. C. Office for Richland County in Plat Book 52 at page 1316, and being further shown on a plat prepared for A. Charles Craft, III and Manita B. Craft by Hussey, Gay Bell & DeYoung, Inc., dated December 13, 1995. Said lands are bounded as follows: NORTH by lands now or formerly of Drasites for a distance of 208.93 feet; EAST by Silver Point Road, S40-2265 for a distance of 208.93 feet; SOUTH by lands now or formerly of Biernaski, for a distance of 208.73 feet; and WEST by further lands now or formerly of Drasites for a distance of 208.47 feet, all measurements a little more or less.

ALSO that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

Christine A. Duncan passed away as a citizen and resident of the State of South Carolina, County of Richland. Respondent Hamilton Duncan has been appointed Personal Representative of the Estate of Christine A. Duncan.

By deed dated March 17, 2014, recorded in the Office of the Register of Deeds for Richland County on April 1, 2014, in Book 1936 at Page 1081, and corrective deed dated September 24, 2014, recorded in the Office of the Register of Deeds for Richland County on October 2, 2014, in Book 11413 at Page 18, Respondent Hamilton Duncan, individually purported to conveyed his interest in the Duncan Property to Hamilton Duncan as Personal Representative of the Estate of Christine A. Duncan.

PETITIONERS' CHAIN OF TITLE

By deed dated April 11, 1985, recorded April 16, 1985 in the Office of the Register of Deeds for Richland County in Deed Book 737 at Page 410, Woodberry Utilities, Inc. conveyed to R.J. Marsh 35.7 acres (*see Respondent's Trial Exhibit 5*)(*R. p. 174*)) as follows:

All that certain piece, parcel or tract of land, situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing 35.7 acres, more or less, and being more fully shown and delineated on a plat prepared for Betty A. Thompson by McMillan Engineering Company, dated March 29, 1960 and recorded in the Office of the Register of Deeds for Richland County in Plat Book 15 at Page 234 and having the following boundaries and measurements as shown on said plat; on the north by property of Lowman Home, measuring thereon six hundred eighty-eight (688') feet; on the east by property of Lowman Home, measuring thereon one thousand six hundred thirty-seven (1,637') feet; on the south by property of Wertz, measuring thereon two hundred fifty-two and three tenths (252.3') feet; on the southwest by property of South Carolina Electric & Gas Company (as shown on said plat, being property hereinbelow described). Measuring thereon three hundred ninety-eight and five-tenths (398.5') feet; on the south by property of South Carolina Electric and Gas Company (as shown on said plat, being property hereinbelow described), measuring thereon one hundred fourteen and nine-tenths (114.9') feet; on the east by property of South Carolina Electric and Gas Company (as shown on said plat, being property hereinbelow described) measuring thereon one hundred eighty-two and six-tenths (182.6') feet; on the south by a County Road (Dirt), measuring thereon eight hundred eighty-three (883') feet; and on the west by County Road (Paved), measuring thereon along an irregular line one thousand six hundred fifty-nine and five-tenths (1,659.6') feet; be all measurements a little more or less.

ALSO: All of those certain two pieces, parcels or tracts of land situate, lying and being near White Rock, in the County of Richland, in the State of South Carolina, containing in the aggregate 1.23 acres, more or less, and being more fully shown on Partial Plat of lands of Mrs. J.W. Kleckley and W.F. McCarthy, dated October 20, 1959, revised July 27, 1960, as Parcel B containing 0.98 acre, more or less, and Parcel C containing 0.28 acre, more or less, the said plat being attached to and recorded with the deed from South Carolina Electric & gas Company hereinbelow referred to as Exhibit "A" and being bounded on North by property hereinabove described, on the East by property now or formerly of Wertz, on the South by

property of South Carolina Electric & Gas Company, and on the West by property hereinabove described.

LESS: The right of Ingress and Egress over a twenty (20') foot strip of land running in a Southwesterly direction along the southeastern side of Tract "A" and extending from the property line of Jay Clark Case to the 360° degree contour of Lake Murray. (This property being previously conveyed to Jay Clark Case in Deed Book D393 at Page 150).

LESS: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina being shown and designated as a one (1) acre tract on a plat prepared for R. J. Marsh, Inc., by Douglas E. Platt, Sr., dated March 25, 1976, and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the Northeast by Paved State Road #S-40-2265 whereon measures 208' feet; On the Southeast by property now or formerly of South Carolina Electric & Gas Company whereon it measures 208' feet; On the Southwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; On the Northwest by lands of Woodberry Utilities, Inc., whereon it measures 208' feet; be all measurements a little more or less.

LESS: All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being near the Town of White Rock, County of Richland, State of South Carolina, being shown and delineated as a 1.00 acre tract on a plat prepared for Charles K. and Margaret C. Miles by Civil Engineering of Columbia, dated October 17, 1977 and to be recorded. Said lot, according to said plat, is bounded and measures as follows, to-wit: On the North by lands now or formerly of Richard Marsh whereon it measures 218.40 feet; On the East by lands now or formerly of Richard marsh whereon it measures 175.58 feet; On the South by unpaved road whereon it measures 243.72 feet; On the West by State Road S-40-610 whereon it measures 239.26 feet; be all measurements a little more or less.

By deed dated June 8, 1995, recorded June 15, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1262 at Page 377, R. J. Marsh conveyed to Silver

Pointe Cove Associates, Inc. (see Respondent's Trial Exhibit 4)(R. p. 171)) the following property:

All those certain pieces, parcel, lots or tracts of land, with the improvements thereon, if any, situate, lying and being in the County of Richland, State of South Carolina, and being more specifically shown and designated as Lots 1, 2, 3, and 4, inclusive, on a plat of Silver Pointe Cove prepared for Silver Pointe Cove Associates, Inc., by C T H Surveyors, Inc., dated April 3, 1995 and recorded in the Office of the RMC for the aforesaid County in Plat Book 55 at Page 7241. See Petitioners' Trial Exhibit 3 (R. p. 239).

By deed dated August 11, 1995, recorded August 14, 1995 in the Office of the Register of Deeds for Richland County in Deed Book 1273 at Page 242, Silver Pointe Cove Associates, Inc. conveyed a fee simple interest in 1310 Silver Point Road, Chapin, South Carolina to Roy R. Drasites and Elizabeth P. Drasites, Petitioners herein, (See Petitioners' Trial Exhibit 15 (R. p. 236)) more particularly described as follows (the "Drasites Property"):

ALL THAT CERTAIN PIECE, PARCEL, OR LOT of land, together with improvements thereon, if any, situate, lying and being located in the County of Richland, State of South Carolina, being shown and delineated as Lot 1, on a final plat of Silver Pointe Cove subdivision, by CTH Surveyors, Inc., dated April 3, 1995, revised April, 25, 1995, and recorded in the Office of the RMC for Richland County in Plat Book 55 at Page 7241, and further being shown on a plat prepared for Roy R. Drasites and Elizabeth P. Drasites by CTH Surveyors, Inc., dated August 9, 1995, to be recorded and having such metes and bounds as shown on said latter plat.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

The Respondent's easement is shown on the Southeastern border of Petitioners' property, Lot 1, on *Respondents' Trial Exhibit 16 (R. p. 197)*.

The earliest plat describing the easement in issue is the plat of Wood Trail Subdivision (earlier name of Respondent and Petitioners' subdivision) prepared by Civil Engineering of Columbia dated May 14, 1981 (some 5 years after the easement execution on July 28, 1976) and said plat does not show the easement in issue terminating at the waters of Lake Murray but terminates at the edge of a road that ran along the boundary of the Petitioners' property and shows the waters of Lake Murray beyond the easement termination point as well as beyond the road. The Respondent's easement is shown on the Southeastern border of said plat. See *Petitioners' Trial Exhibit 13 (R. p. 235)*.

Petitioners and Respondent had a common grantor for their properties; that being Woodberry Utilities, Inc. Woodberry Utilities, Inc. was conveyed the common source property (35.7 acres) plus fringe lands* by deed from Betty A. Thompson (*See Respondent's Trial Exhibit 6 (R. p. 178)*) dated August 14, 1973 and recorded August 14, 1973 in Deed Book 289 at Page 790 in the Office of Register of Deeds for Richland County.

A portion of Petitioners' property is fringe land which is a portion of Parcel B in the deed from South Carolina Electric & Gas Company to Betty A. Thompson by deed dated October 30, 1960 and recorded May 1, 1963 in Deed Book 354 at Page 554 in the Register of Deeds Office for Richland County. *See Respondent's Trial Exhibits 7 (R. p. 181) and 9 (R. p. 181)*. Said deed reserved an easement for a road running generally along the Southeastern boundary of the aforesaid described tracts.

The 35.7 acre tract owned by Betty A. Thompson is shown on a plat dated March 29, 1960 prepared McMillian Engineering Company and filed of recorded in Richland County on

April 15, 1960. *See Respondent's Trial Exhibit 21*(R. p. 202). The road that is referenced on the Woodtrail Plat is shown on Respondent's Trial Exhibit 21 (R. p. 202) on the Southeastern side of the 35.7 acre parcel and is the road that was reserved to SCE&G in Respondent's Trial Exhibit 7 (R. p. 181) and 9(R. p. 181).

A portion of Petitioners' property is fringe land and it is a portion of Parcel B, 0.98 acre, and is *Respondent's Trial Exhibit 10; R. p. 185.*

Larry Smith, a registered land surveyor, testified as an expert witness for the Respondent. Mr. Smith worked with South Carolina Electric and Gas Company and did all the fringe land surveying on Lake Murray for the power company from 1962-1969, and as a private surveyor is still doing fringe land surveys for the power company. Transcript p. 58 (R. p. 99, Lines 15-21). Mr. Smith testified that: (1) the creator of Respondent's easement could only convey an easement to the 360 contour because it did not own the land below the 360 contour; (2) the grantor's property terminated at the 360 contour, Transcript p. 63 (R. p. 104, Lines 7-9); (3) the property below the 360 contour came under the Power Company's jurisdiction, Transcript p. 65 (R. 106, Lines 5-24); and (4) any use of the Power Company's property below the 360 contour had to be with the Power Company's approval, Transcript p. 66 (R. p. 107, Lines 1-3).

Tommy Boozer, Shoreline Management Manager of South Carolina Electric and Gas Company, has been such for 25 years. Transcript p. 82 (R. p. 123, Lines 21-23). Mr. Boozer testified that: (1) he dealt with developments and different activities around the shoreline, Transcript p. 83 (R. p. 124, Lines 1-3); (2) South Carolina Electric and Gas Company had jurisdiction of property owned by it below the 360 contour, Transcript p. 83 R. p. 124, Lines 8-9); (3) this property came under SCE&G's written Shoreline Management Plan. *Petitioners's Trial Exhibit 3 (R. p. 213), Transcript p. 83 (R. p. 124, Lines 22-25)*; (4) this plan had been in

existence since 1975; (5) Respondent, by letter, had requested permission from SCE&G to do certain work below the 360 contour for grading and removing some soil. Transcript p. 85 (R. p. 126); (6) there was no permit issued by SCE&G for that request, Transcript p. 85 (R. p. 126); and (7) a boat dock nor a boat ramp would be issued to the Respondent, Transcript p. 85 (R. p. 126). Page 16 of the Lakes Murray Shoreline Management Plan indicates that a residential land owner who owns property above the SCE&G fringe land will have the right of access by foot to and from the lake. *Petitioners' Trial Exhibit 3* (R. p. 213).

APPLICABLE LAW CASES

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. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578.

As a general rule, to constitute a grant of an easement, any words clearly showing the intention to grant an easement are sufficient. 25 Am.Jur.2d. *Easement and Licenses* §15, at 512 (2004). “Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument; the grant should be construed so as to carry out that intention.” *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 441 S.E.2d 331, 335 (Ct. Appl 1994).

“If the language is uncertain or ambiguous in any respect, all the surrounding circumstances, including the construction which the parties have placed on the language, may be considered by the court, to the end that the intention of the parties may be ascertained and given effect.” 25 Am.Jur.2d *Easements* §18, at 516 (2004). Cited as *Ten Woodruff Oaks, LLC v. Point Development, LLC*, 385 S.C. 174, 638 S.E.2d 510.

If there is any ambiguity in an easement, the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the easement. The reason for the rule of strict construction against the party preparing the easement is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the easement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423.

Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

A plat which is not referenced or incorporated into an easement description is not made a part of the legal dimensions described in the plat. *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990).

A plat is admissible although not referenced to in any deed in the opposing party's chain of title and the opposing party was unaware of the existence of the plat prior to trial. *Culbertson v. Culbertson*, 273 S.C. 103, 254 S.E.2d 558 (1979).

"A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." (quoting 28A C.J.S. *Easements* § 57 (1996)); *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

The rights of one claiming an easement by express grant are limited within the scope of the privilege. The extent of the servitude is determined by the terms of the grant. *Forest Land*

Co. v. Black, 216 S.C. 255, 57 S.E. (2d) 420 (1950); *Gordon v. Hoy*, 211 Va. 539, 178 S.E. (2d) 495 (1971).

LEGAL ANALYSIS

Pursuant to Rule 242, SCAR, the Petitioner respectfully moves for a Writ of Certiorari and for this Court to review and reverse the Court of Appeals' Opinion. Review should be granted because of the special and important issues raised by the Opinion's ruling below. The Opinion below should be reviewed because the ruling is in contraction with existing South Carolina Supreme Court case law as to determining the intent of the grantor as to a granted easement and the scope of the easement. Lastly, the Opinion misapplies the standard of review of the Court of Appeals in that there was not a preponderance of the evidence supporting the factual findings of the Master.

EASEMENT DOES NOT CLEARLY STATE PURPOSE

The easement grant owned by the Respondent is as follows:

All that certain non-exclusive easement for ingress and egress over a Twenty (20') feet strip from the above described property to the 360 foot contour of Lake Murray, said easement being more particularly described in that certain deed from Woodberry Utilities, Inc., to Jay Clark Case, recorded in said RMC Office in Deed Book D393 at page 130, being more particularly shown on the plat above referred to.

Initially, looking at the expressed terms of the easement, the easement language does not speak with specificity as to the purpose of the easement. (R. p. 166). The easement states it is an "ingress/egress" easement. It only expresses access rights from the Respondent's property to the 360° degree contour to Lake Murray. Respondent's easement gives the legal right to travel (ingress/egress) the distance "extending from the property line of Respondent's property to the 360 degree contour of Lake Murray." The S.C. Court of Appeals is broadening the "intent" of the Respondent from an ingress/egress easement only to one that includes "lake access" to Lake

Murray. See Respondent's Trial Exhibit 1. It does not state that the specific purpose is for access to Lake Murray. Respondent's deed did not reference a plat showing the termination point of the easement abutting the waters of Lake Murray. See Respondent's Trial Exhibit 1. It is also clear, from the testimony by Respondent's expert witness, Larry Smith, that the grantor of the easement had no further rights in the property beyond its termination point which was the 360° degree contour of Lake Murray. *Transcript p. 104* (R. p. 104, Lines 7-9) This meant that his easement granting rights terminated at the 360° degree contour. Obviously, the grantor of the easement could only grant easement rights on the property that it owned. In order to travel from the Respondent's property to access Lake Murray requires two easements because two separate properties are involved. The Respondent's easement provides the ingress/egress to the property, owned in 1976 by Woodberry Utilities.

EASEMENT HAS NO ACCESS TO LAKE MURRAY

Once at the waters of Lake Murray, one needs a second easement to access Lake Murray owned by SCE&G. It is impossible for one easement to do both tasks because the ingress/egress property is owned by a different party than the one that owns Lake Murray. Lake Murray is owned/controlled/managed by SCE&G and lake access to Lake Murray must be granted only by SCE&G for that property below the 360° contour. See Petitioner's Trial Exhibit 3. No documents were presented whereby SCE&G either granted Respondent "lake access" to Lake Murray. See Petitioner's Trial Exhibit 1. The easement on page 16 of SCE&G's manual gives the Petitioners' family their legal lake access but it does not give Hamilton Duncan an easement for lake access to Lake Murray because the easement on page 16 is for "lakefront" owners only (it doesn't apply to easement holders). See Petitioner's Trial Exhibit 3, p. 16. In S.C. Court of Appeals' Opinion, the Court indicated that: "Duncan is responsible for bearing the costs of

maintaining the easement, and any improvements would be subject to SCE&G's approval." This paragraph seems to be indicating that the Court is recognizing that Respondent's use of the property beyond the termination point of his easement would have to be subject to SCE&G's approval. See Order, Ct. App., paragraph 2.

PRIOR USE OF EASEMENT

The Respondent must base his easement right on what was granted to him by this particular language. The history of the use for the easement does not indicate that it was used for vehicular traffic towing light watercraft. Respondent was not present for the hearing and did not testify on his use. Respondent has presented no evidence on his personal interpretation of the easement language. The other witnesses were three registered land surveyors and a representative from South Carolina Electric & Gas Company whom did not testify as to any specific use of the easement. Respondent does not have the physical ability to launch a small watercraft from the granted easement distance because the easement terminates at the 360° contour and there is no granted access agreement from SCE&G for use of Lake Murray by Respondent. See Petitioner's Trial Exhibit 1.

Respondent was notified by SCE&G that there was no permit for soil excavation of the kind requested by the Respondent. (*Petitioners' Trial Exhibit 1*) (R. p. 210). This was the shoreline soil where the easement is located. Mr. Boozer had further testified he had received no dock permit or ramp permit. The Management Plan further indicates that an abutting property owner has foot traffic rights on fringe land.

EASEMENT WAS FOR ACCESS TO ROAD

Petitioners argue that based on the above the easement language is ambiguous in determining the intent of easement. Looking beyond the actual "four corners" of the easement

language, the only other recorded document in the Respondent's chain of title is a plat prepared by Site Consultants in 1988; some 12 years after the actual grant of easement in 1976 (*Respondent's Trial Exhibit 18*) (R. p. 199). This plat is not part of the original easement grant but is just referenced in subsequent deeds. This plat could not grant any more rights than what was provided by the language in the original grant.

The earliest recorded evidence, outside the terms of the easement grant, is a plat prepared in 1981 which is referred to in the facts as the "Woodtrail Plat" shows the Respondent's property, Petitioners' property and the easement in question. (*Petitioners's Trial Exhibit 13*) (R. p. 235). At the termination point of the easement, there is a road. Mr. Marsh executed the deed from Woodberry Utilities, Inc. to Respondent's predecessor-in-title as to the easement. (*Respondent's Trial Exhibit 15*) (R. p. 194). The Woodtrail Plat prepared for R.J. Marsh, Inc. (corporation owned by Mr. Marsh referred to immediately above who owned also Woodberry Utilities, Inc. that executed the easement to Respondent's predecessor-in-title) was being prepared for someone who had knowledge of what abutted the Woodtrail plat (i.e. the road which is located at the end of the Respondent's easement). Petitioners argue that this plat best expresses the intent of the Respondent's easement in that it connected to a road that traverses the Woodtrail Subdivision and tied into a road.

Based on Petitioners' chain-of-title, which originated out of the 35.7 acre tract conveyed to Woodberry Utilities, Inc. by Betty A. Thompson, the same road on the Woodtrail Plat appears on the 1960 plat showing the 35.7 acres. (*Respondent's Trial Exhibit 6*) (R. p. 178). The fringe lands conveyed by South Carolina Electric & Gas Company to Betty A. Thompson (fringe land in out chain-of-title) reserved to South Carolina Electric & Gas Company the road which is shown on the 1960 plat prepared for Betty A. Thompson showing the 37.5 acres. (*Respondent's*

Trial Exhibit 9) (R. p. 181). Petitioners argue that this road is the same as that which is appears on the 1960 Woodtrail Plat.


The plats referenced in this portion of Petitioners' legal analysis, shows, by preponderance of evidence, that the easement provided access to a road that existed as early as 1960 and was in existence after the easement grant to the Respondent and are plats closest in time to the easement execution as compared to plats relied upon by the Respondent to prove that the easement provided was for access to Lake Murray. One of Petitioners' relied upon plat was not in the chain-of-title of the Petitioners' and Respondents property. The S.C. Court of Appeals seemed to minimize the legal significance of the plat that was not in the chain-of-title. Case law cited by the Petitioners states otherwise. In ruling against the Petitioners' road argument the S.C. Court of Appeals referenced that Petitioners were relying on a plat that was not in the chain-of-title to the property. This same plat shows the road lying between the termination point of Respondent's easement and the waters of Lake Murray.

CONCLUSION

Since the easement language only indicated that it was for access purposes, it did not specify lake access and did not have a plat showing that the termination point of the easement adjoined Lake Murray. The easement is ambiguous. Circumstances beyond the face of the document are necessary to determine its purpose. To have legal access use of Lake Murray by SCE&G by Respondent, there would have to be evidence of such which does not exist in this record. There was no history of the use of Respondent's easement for the use granted by the S.C. Court of Appeals by light watercraft and the is not a preponderance of evidence supporting the ability of the physical access to Lake Murray for light watercraft. The deeds and plats referenced in this Motion are the closest in time as to the creation of the easement and reflect that

this easement tied into an existing road and not Lake Murray. Preponderance of evidence supports the intent of the easement was access to the road which abutted the termination point of the granted easement.

DAVIS, FRAWLEY, LLC

By: 

James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
Telephone: (803) 359-2512
randy@oldcourthouse.com
ATTORNEYS FOR PETITIONERS

Lexington, South Carolina
July 20, 2018

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUL 20 2018

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Joseph R. Strickland, Master-in-Equity

Trial Court Case No.: 2013-CP-40-05740
Unpublished Opinion No.: 2018-UP-211
(S.C. Ct. App. Filed May 16, 2018)

Hamilton Duncan, Individually and Hamilton Duncan, as
Personal Representative of the Estate of Christine A. Duncan.....Respondent,

v.

Roy Drasites and Elizabeth DrasitesPetitioners.

PROOF OF SERVICE

I, Nicole T. Price, paralegal with the law firm of DAVIS | FRAWLEY, LLC, do hereby certify that I have served the **PETITION FOR WRIT OF CERTIORARI AND APPENDIX** on Hamilton Duncan, Individually and Hamilton Duncan, as Personal Representative of the Estate of Christine A. Duncan, by hand delivering a copy of the same to his attorneys of record, Michael W. Tighe, Esquire and George A. Taylor, Esquire, 1812 Lincoln Street, Columbia, SC 29202 and a copy on the South Carolina Court of Appeals at 1220 Senate St, Columbia, SC 29201.

Nicole T. Price

Nicole T. Price, Paralegal
DAVIS | FRAWLEY, LLC
140 East Main Street
Lexington, South Carolina 29071

Lexington, South Carolina

ATTORNEYS FOR RESPONDENTS