THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Brian L. Boger, Special Referee

Appellate Case No. 2018-000450

Trenholm Building Co., ... Respondent,

v.

Rajarathnam S. Aluri, Trustee,
The Aluri Family Trust, UTD May 3, 2012, ... Appellant.

FINAL BRIEF OF RESPONDENT

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Counterstatement of Question Presented

Is the circuit court's finding of no easement by necessity supported by the evidence?

STATEMENT OF FACTS

Lot 650 and Lot 660 are adjacent to one another on Pickens Street in Columbia, between Greene Street and Blossom Street. A four-unit apartment building sits on each lot. The address of appellant's Lot 650 is 616 Pickens Street. The address of respondent's Lot 660 is 618 Pickens Street.

Behind the apartment building at 618 Pickens is another, smaller structure containing two apartments. These two apartments, and all six parking spots belonging to respondent's 618 Pickens, are reached by a driveway on Lot 660. The four or five parking spots belonging to appellant's 616 Pickens are reached by a municipal alley bordering the south side of Lot 650.[1]

A retaining wall running east to west roughly bisects the rear half of appellant's Lot 650, behind the apartment building.[2] The four or five parking spots on the lot are found on the south side of the wall, accessible by the alley. The portion of the rear of Lot 650 on the north side of the wall is in the nature of a back yard. This portion is roughly three feet higher than the portion on the south side, next to the alley. In order for this back yard to be converted into additional parking area and reached from the alley, it would be necessary to excavate the northern half so as to level it with the southern half where 616's parking spots are found.

Both lots were owned from 1984 to 1998 by Shandon Rentals Company, a general partnership. In 1998 Shandon Rentals sold 616 Pickens to EW&M, LP. The next year Shandon Rentals sold 618 Pickens to Trenholm Building Company, Inc., the respondent.

In 2003 EW&M, LP, sold 616 Pickens to the appellant.

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[1] *See* plat dated 9/29/76, Def. Exh. 3, R. 75.

[2] The wall is seen in a photograph, Pl. Exh. 2, R. 61. The photo looks south, showing appellant's retaining wall and the parking area behind his building. [Tr. 16/14-25, R. 15.]

According to the testimony of Mr. Miller, respondent's manager of its apartments at 618 Pickens, no use of 618's driveway was being made by anyone associated with the appellant when Mr. Miller's management began, about six years before trial. [Tr. 13/21–23, R. 12; Tr. 15/5–9, R. 14.] Beginning several years before trial, the appellant began authorizing various people to use the northern half of the rear portion of his 616 Pickens lot for parking. This area could only be reached via respondent's driveway on 618 Pickens. At various times the appellant authorized friends, employees, a member of his family, and invitees attending functions at his hall, just south of 616 Pickens, as well as his 616 tenants to park in this area [Tr. 108/13–109/3, R. 55–56], reached only by 618's driveway. This resulted in friction leading finally to this action, in which respondent sought a declaration that the appellant had no right to the use of 618's driveway. The appellant counterclaimed, seeking an opposite declaration.

The court of common pleas found that the appellant has no easement by necessity to use the driveway. This appeal followed.

ARGUMENT

The circuit court's finding of no easement by necessity is amply supported.

The circuit court found that no easement implied by necessity arose when title was severed in 1998. This is a finding of fact in a law case.

> The determination of the existence of an easement is a question of fact in a law action, *Jowers v. Hornsby*, 292 S.C. 549, 551, 357 S.E.2d 710, 711 (1987), and this Court reviews factual issues relating to the existence of an easement under a highly deferential standard. *See Townes Associates, Ltd. v. City of Greenville,* 266 S.C. 81, 85-86, 221 S.E.2d 773, 775 (1976) (providing that questions of fact in a law action are generally reviewed under the "any evidence" standard).

Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 659 S.E.2d 151, 154 (2008). In the face of the finding of no easement, it is the

appellant's burden to prove that the existence of an implied easement by necessity is the *only* reasonable conclusion to be drawn from the evidence.[3] Because the evidence does not prove that an implied easement by necessity arose, the circuit court's finding of no easement is conclusive.

Shandon Rentals Company, a general partnership, owned both 616 Pickens Street and 618 Pickens Street from 1984 to 1998. When Shandon Rentals sold 616 Pickens Street to EW&M, LP, it retained ownership of 618 Pickens and its driveway. Thus, severance of title occurred with the 1998 conveyance to EW&M. The appellant bore the burden of proving that an easement implied by necessity of 618's driveway accompanied that conveyance of 616 Pickens Street.

A. An easement by necessity may arise when the severed parcel would be landlocked without it.

The doctrine of easements arising by necessity springs from the fact that when unified title is severed, leaving a severed parcel landlocked, the grantor of the landlocked parcel must have intended to grant an easement over his remaining property so that the landlocked parcel would have a way out. As Judge Cureton explained for the Court in *Morrow v. Dyches,* 328 S.C. 522, 492 S.E.2d 420, 424 (Ct. App. 1997):

> [T]he whole point of the easement by necessity doctrine is to ensure that landlocked parcels have access to a public road; thus, the doctrine presumes or implies that the grantor intended for the grantee of a landlocked parcel to have access, which is one of the rights essential to the enjoyment of land.

Accord: Brasington v. Williams, 143 S.C. 223, 238-39, 141 S.E. 375, 380 (1927);

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[3] In the case at bar, the judge determined that an easement by necessity had not been proven. In an action at law tried without a jury, the judge's finding of fact will not be disturbed unless there is no evidence to support the judge's finding.

Jowers v. Hornsby, 292 S.C. 549, 551-52, 357 S.E.2d 710 (1987).

Richards v. Trezvant, 185 S.C. 489, 194 S.E. 326, 329 (1937);[4] *Kennedy v. Bedenbaugh,* 352 S.C. 56, 61, 572 S.E.2d 452 (2002);[5] *Boyd v. BellSouth Tel. & Tel. Co.,* 359 S.C. 209, 213, 597 S.E.2d 161 (Ct. App. 2004) (*rev'd in part on other grds., Boyd v. BellSouth Tel. & Tel. Co.,* 369 S.C. 410, 633 S.E.2d 136 (2006);[6] *Paine Gayle Properties, LLC v. CSX Transportation, Inc.,* 400 S.C. 568, 735 S.E.2d 528 (Ct. App. 2012);[7] *Jowers v. Hornsby*, 292 S.C. 549, 551, 552, 357 S.E.2d 710, 711 (1987).[8]

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4 [L]ot No. 9 is completely surrounded by the other lots * * * and has no way of ingress and egress to and from it except over these lands. It further appears that one terminus of the right of way is on lot No. 9, and that the right of way is essential to the enjoyment of the lot. * * * We think that it is patent this creates a right of way by necessity * * * .

5 [A]n easement by necessity could not have arisen at the time Lindler conveyed the land-locked tract to S.B. Holley because S.B. Holley had access to a road from the land-locked tract.

6 The third element, that of necessity, requires a showing of more than convenience. *Morrow [v. Dyches],* 328 S.C. 522, 529, 492 S.E.2d 420, 424 (Ct. App.1997). The doctrine of easement by necessity is based upon the presumption that the grantor intended the grantee of a landlocked parcel to have access to his property, a right recognized as essential to the enjoyment of the land. *Id.* Thus, "[this] doctrine only provides reasonable access to the dominant estate when there is none; it does not provide a means for ensuring a preferred method of access to a particular portion of a tract when access to the tract is otherwise available."

7 "The necessity by which a person derives a right of way, is when one person sells to another lands inclosed on all sides by other lands. Here[,] the law imposes an obligation on the seller to allow the purchaser a right of way over his adjacent land."

Id., 735 S.E.2d at 540, *quoting Turnbull v. Rivers,* 14 S.C.L. 131, 139 (Ct. App. 1825).

8 The trial court found that appellant had an alternate means of access to his property through an alleyway which is shown on the county tax map and referred to in the deed by

(continued...)

B. The appellant's property is not landlocked, nor does he seek an easement over the respondent's driveway as necessary for the use of his apartment building.

1. The appellant's property is freely accessible.

The appellant's apartment building at 616 Pickens Street fronts upon Pickens Street, the same as does respondent's apartment building next door at 618. The parking spaces in back of the appellant's building are reached via the municipal alleyway which runs east and west adjacent to the southern boundary of the appellant's property. [*See* plat dated 9/29/76, Def. Exh. 3, R. 75.] The appellant's parking area in back of his building has at least as many parking spaces for each of his four apartments as does respondent's parking area with six apartments. The northern portion of the back yard behind respondent's apartment building cannot be used for parking, but it ***can*** be used for all the things back yards are normally used for—which does not include parking cars.

2. Use of 618's driveway is not necessary for the enjoyment of the building at 616.

The appellant failed to establish an essential element of his claim: **necessity**. He acknowledged that access to the area in question in the rear of his property could be achieved by excavation but the work would be expensive.[9] However, he offered no engineering evidence, no contractor evidence—no expert evidence of any

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[8](...continued)
which appellant acquired his property. While the trial court noted that the alleyway is covered by underbrush and growth, it found that the mere inconvenience of clearing this alleyway is not a sufficient burden on the appellant to satisfy the reasonable necessity requirement.

[9] Q: You could excavate it and put up another retaining wall and have full use of that area, correct?

A: It can be possibly done, but it's not an easy job. It's an expensive job.

Tr. 100/24–101/3, R. 47–48.

kind—concerning what the undertaking would require or what its expense might be. The reasonableness of such an expense could only be judged in relation to the value of the property, and there is no evidence of that either.

There have always been four or five parking spots behind the building at 616 Pickens Street, reached by way of the alley on the south side of the building. [Tr. 106/19–22, R. 53.] By comparison, the tenants of respondent's six apartments at 618 Pickens Street have a total of six parking places behind the building—one parking spot per apartment. The tenants of the four apartments in appellant's 616 Pickens Street have always had one parking spot per apartment, and one extra spot besides. Doubling the number of parking spots behind 616 Pickens Street is not necessary to the enjoyment of the property.

It is impossible to say that "there could be no other reasonable mode of enjoying [616 Pickens Street]," *Boyd, id.,* without use of the driveway next door.

Moreover, the appellant does not seek access to the back yard of his apartment building primarily—if at all—for the use of the building's tenants. The appellant seeks to double the number of parking spots behind his building to support an expanded use. He seeks it for the uses he has claimed in the past (without permission): for the use of his friends, employees, a member of his family, and invitees attending functions at his hall, just south of 616 Pickens. [Tr. 108/13–109/3, R. 55–56.] These uses are unrelated to the alleged dominant tenement, the building at 616 Pickens Street. A use unrelated to the severed property could never give birth to an easement by necessity.

* * * * * *

In the context of modern urban conveyancing, it would be extraordinary for experienced conveyancers on both sides of a closing to leave to implication such an important matter as a driveway easement, to be fought over in court decades later. Such an oversight would border on malpractice if an easement were, in fact, contemplated. The far more reasonable inference is that no such easement was

intended.

CONCLUSION

There is no evidence of an easement implied by necessity. Much less is the existence of such an easement the only reasonable conclusion to be drawn.

Respectfully submitted,

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