

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Perry M. Buckner, III Circuit Court Judge

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Case No. 2017-CP-07-02110

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Taylor Reuben Adams,..... Respondent

v.

Charles Willis Gardner,..... Appellant

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INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

- I. The Court erred in granting summary judgment because Respondent failed to establish that he was a successor in interest to the Howard Property.
- II. The Circuit Court erred in interpreting the Quiet Title Order to confer title to the road and the boat landing on the Respondent.
- III. The Circuit Court erred in granting Partial Summary Judgment because a question of material fact exists as to the ownership of the road and boat landing.
- IV. The Respondent failed to meet the factual burden to prove trespass to try title, thus the Order of Partial Summary Judgment should be reversed.
- V. The Circuit Court erred in granting summary judgment because the question of a property line is one of fact for a jury to decide.

## STATEMENT OF THE CASE

The Appellant and Respondent live on neighboring properties in Beaufort County. In 2017, the Appellant filed this lawsuit for trespass against the Respondent. Subsequently, the Respondent filed a counterclaim for trespass against the Appellant. The Respondent then filed a Motion for Partial Summary Judgment seeking an order vesting ownership of the “30-foot road and property to the south of the 30-foot road” on the Respondent. (Respondent’s Motion for Summary Judgment ¶3)

The Motion for Partial Summary Judgment was heard by the Honorable Perry M. Buckner on June 26, 2018 in Beaufort County. On July 10, 2018 the Court ordered partial summary judgment vesting title in fee simple to a thirty (30) foot road, boat ramp and the +/- 1.054 acres below the road in the Respondent and dismissing the Appellant’s trespass claim. (Order Granting Partial Summary Judgment to Respondent, Buckner, J., July 10, 2018, pp. 3). On July 20, 2018, the Appellant filed a Motion for Reconsideration. The Circuit Court denied this motion on August 9, 2018. (Order Denying Appellant’s Motion for Reconsideration, Buckner, J., July 20, 2018.) Appellant timely filed this appeal of the Order Granting Partial Summary Judgment.

## STATEMENT OF FACTS

The Appellant brings this appeal seeking to reverse the Beaufort County Circuit Court Order Granting Partial Summary Judgment in favor of the Respondent. The Order erroneously grants title in fee simple to a thirty (30) foot road, boat ramp and the +/- 1.054 acres below the road in the Respondent. (Order Grant Partial Summ. J. to Resp't, 3). The Court states that a Decree of Title Clearance signed by the Honorable Thomas Kemmerlin, Jr. on November 20, 1990 in Civil Action No.: 89-CP-07-879. (the "Quiet Title Order") resolved all issues of ownership regarding the subject property. (Order Grant Partial Summ. J. to Resp't, fn 1). As shown below, even if that is the case, the Circuit Court incorrectly interpreted the Quiet Title Order.

The two properties at issue in this case are referenced in the Quiet Title Order. The relevant portion of the Quiet Title Order reads:

That the Plaintiff (Appellant's Father and predecessor in interest), by virtue of having acquired all of the interests of the heirs of Ardelle S. Gardner, owns all of Lot 15, Section 12, 1S1W, Warsaw Island, St. Helena Township, Beaufort County, South Carolina, more particularly described on the plat prepared for Ardelle S. Gardner by Rod C. Spann dated November 11, 1976, and recorded in plat Book 28 at Page 21 (the "Gardner Property"),

save and excepting, however, the 1.054 acre portion of Lot 15 situate immediately below (southeast) the unpaved Beaufort County road running in a generally southwest to northeast direction, said portion of Lot 15 being more particularly described on a plat prepared by Niels Christensen, IV dated June 5, 1990, attached hereto and incorporated as a part hereof, said piece of Lot 15 being owned by the Defendant John Howard. (the "Howard Property").

Kemmerlin Jr., J., Decree of Title Clearance, *Gardner, et al. v. Gardner, et al.*, Beaufort County Master in Equity, Case No. 89-CP-07-879, November 20, 1990 at 11.

The properties at issue in this case were previously owned by Appellant's Grandmother, Ardelle S. Gardner, and encompassed the entirety of Lot 15, Section 12, 1S1W on Warsaw Island in Beaufort County. After she passed away, Appellant's father brought a quiet title action to

determine the ownership of the late Ms. Gardner's estate. See *Gardner*, Beaufort County Master in Equity, Case No. 89-CP-07-879, November 20, 1990. This quiet title action was settled by agreement and resulted in the above referenced Quiet Title Order. See Kemmerlin Jr., J., Decree of Title Clearance, *Gardner*, Case No. 89-CP-07-879, at 10.

The Gardner Property and Howard Property are located on Warsaw Island, St. Helena Township, South Carolina. The two properties are bounded by the marsh and Jenkins Creek on one side and Ashton Drive, on the other. Separating the two properties sits Warsaw Island Road which, becomes a dirt road as it runs in a southwest to northeast direction eventually leading to a paved boat landing in Jenkins Creek.

Appellant, Charles Gardner, has been living on the Gardner Property for over 50 years, and acquired ownership thereof in 1993. (Beaufort County R.M.C., Book 635 at Page 2600, July 6, 1993). During that entire time, Appellant had use of the road and boat landing. In or around 2013, Respondent moved onto the Howard Property, and placed a mobile home on the same.

After a short time, Appellant and Respondent became at odds with one another, leading to the Appellant bringing the instant case against the Respondent for trespass, conversion and declaratory and injunctive relief on October 12, 2017. (see Complaint). Respondent counterclaimed for trespass as well as an action for frivolous proceedings against the Appellant. (see Answer and Counterclaims).

The pleadings did not specify the exact nature of the trespass by either party, nor did they provide legal descriptions of the Gardner or Howard Properties. (See Compl. And Answer). Nonetheless, the Respondent filed a Motion for Partial Summary Judgment on March 15, 2018 asking the court to confirm title in the road and the boat landing in the Respondent's name. (Respondent's Mot. Summ. J. pp. 2 ¶ 3).

The Motion for Partial Summary Judgment was heard by the Honorable Perry M. Buckner on June 26, 2018 in Beaufort County. (Motion Hearing [Mot. Hr'g Tr.] Transcript 1). At the hearing, the judge was provided several plats, the Quiet Title Order, and a deed showing the conveyance of the Appellant's property from Appellant's Father to Appellant in 1993. (Mot. Hr'g Tr. 5-8). As this was a motion for summary judgment, no testimony was taken from any witnesses. (see Mot. Hr'g Tr.). Further, no facts were stated by either party as to the location of any given trespass. (Id.) The record does not indicate that a deed to the Howard Property was submitted to establish title in the name of the Respondent. (Id.)<sup>1</sup>

On July 10, 2018 the Court found,

- i. John Howard is shown by the Quiet Title Action, the deeds, and the relevant plats to be the owner of the thirty-foot road and the property to the south of the current Plaintiff. (Order Grant Partial Summ. J. to Resp't, Findings of Fact, pp. 2 ¶3).
- ii. The Respondent was further found to be the successor in interest to John Howard. (Order Grant Partial Summ. J. to Resp't, Findings of Fact, pp. 2 ¶4).
- iii. The court then found that "The thirty-foot road, the boat ramp at the eastern end of the thirty-foot road and the property to the south of the road is owned by the Respondent." (Order Grant Partial Summ. J. to Resp't, pp. 2 ¶3).

Appellant believes all three of these findings to be in error and respectfully requests this Court reverse the order for summary judgment and remand the case to the Circuit Court for trial.

#### ARGUMENT

- I. **The Court erred in granting summary judgment because Respondent failed to establish that he was a successor in interest to the Howard Property.**

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<sup>1</sup> Respondent's attorney stated in the hearing that Respondent was "in the chain of title" with John Howard, however it does not appear that any deed was submitted to evidence this assertion. (Mot. Hr'g Tr. 4)

The Circuit Court erred in its factual finding that, “the Defendant is the successor in interest to the real property owned by John Howard at the time of the Quiet Title Action.” (Order Grant Partial Summ. J. to Resp’t, Findings of Fact, pp. 2 ¶4). The Court stated that it had reviewed the pleadings, Motion for Partial Summary Judgment, and listened to the arguments of counsel. (Order Grant Partial Summ. J. to Resp’t, Findings of Fact, pp. 1). It further stated the deeds and plats it considered when making its findings of fact. (Id. and See Mot. Hr’g Tr., pp. 12,13). Of the deeds in the record, none confer title to the Howard Property on the Respondent. (Id.)

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *City of Columbia v. ACLU of South Carolina*, 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996). Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dept. of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (S.C. App., 2001).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Trivelas*, 348 S.C. 125, 558 S.E.2d 271 (S.C. App., 2001).

The conclusion that the Respondent is the successor in interest to the Howard Property is a material fact. By failing to submit any deed that would support the finding that Respondent was the successor in interest to the Howard Property the Respondent failed meet the initial burden to demonstrate the absence of a genuine issue of material fact. *See Trivelas*. On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party

below." *Regions Bank v. Schmauch*, 582 S.E.2d 432, 354 S.C. 648 (S.C. App., 2003). The Respondent's failure to provide title to the Howard Property leaves an ambiguity as to Howard Property's ownership as well as its current metes and bounds. Thus, the Court erred by making a factual finding that the Respondent was a successor in interest to the Howard Property, as further inquiry into the facts as to not only the ownership, but also the metes and bounds of the Howard Property. Thereby the Order conferring title to the road and boat landing in the Respondent must be reversed as it is without evidence.

**II. The Circuit Court erred in interpreting the Quiet Title Order to confer title to the road and the boat landing on the Respondent.**

Even if this Court agrees that the Respondent is the successor in interest to the Howard Property, the Court made an error of law by interpreting the Quiet Title Order as the plain language of Quiet Title Order states the road is a "County Road" that separated the Appellant and Respondent's property and is not part Howard Property.

In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public policy. *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987); *Springob v. Farrar*, 334 S.C. 585, 514 S.E.2d 135 (S.C. App., 1999). In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. *Id.* The intention of the grantor must be found within the four corners of the deed. *Id.*

The Circuit Court found that the Decree of Title Clearance signed by the Honorable Thomas Kemmerlin, Jr. on November 20, 1990 in Civil Action No.: 89-CP-07-879 resolved the issues of ownership to the subject property. (Order Grant Partial Summ. J. to Resp't, Findings of Fact, pp. 2 fn. 1). The Circuit Court then ruled that the "thirty-foot road, the boat ramp and the property to the south of the road is owned by the [Respondent] Taylor Ruben Adams" (Order Grant

Partial Summ. J. to Resp't, pp. 2 ¶(2). This finding is simply made in error based on the Quiet Title Order.

The Quiet Title Order consistently refers to the 30-foot road between the Gardner Property and the Howard Property as a "County Road". For example, in Section 14(3) of the Quiet Title Order, the court stated that the parties advised the Court that they had reached an agreement, the terms of which are as follows:

That the Plaintiff, by virtue of having acquired all of the interest of the heirs of. Ardelle S. Gardner, owns all of Lot 15, Section 12, 1S1W, Warsaw Island, St. Helena Township, Beaufort County, South Carolina, more particularly described on the plat prepared for Ardelle S. Gardner by Rod C. Spann dated November 11, 1976, and recorded in plat Book 28 at Page 21, save and excepting, however, the 1.054 acre portion of Lot 15 situate immediately below (southeast) *the unpaved Beaufort County road running in a generally southwest to northeast direction*, said portion of Lot 15 being more particularly described on a plat prepared by Niels Christensen, IV dated June 5, 1990, attached hereto and incorporated as a part hereof, said piece of Lot 15 being owned by the Defendant John Howard. (Emphasis Added)

Kemmerlin Jr., J., Decree of Title Clearance, *Gardner*, Case No. 89-CP-07-879, November 20, 1990 at 11.

Later in that same paragraph the Order states,

The Plaintiff (Appellant's Father and predecessor in interest to the Gardner Property) is the only individual who could possibly contest John Howard's ownership of this 1.054-acre tract, and he has stipulated that John Howard owns this parcel in fee simple. (Id. at 12). The *unpaved county road* separates the respective portions of Lot 15 owned by the Plaintiff and John Howard." (Emphasis Added)

Id.

The Quiet Title Order later states that the Appellant's father owned all of the property described as Lot 15, Section 12, 1S1W, "Save and Except: the thirty foot dirt road running in a generally southwest to northeast direction across Lot 15 and that 1.054 acre portion of Lot 15

immediately below (southeast) the thirty (30) foot dirt road, owned by Defendant John Howard.” (Id. at 15).

The Appellant accedes that the language in the preceding paragraph could be determined to be ambiguous as to the ownership of the road. However, reading the Quiet Title Order as a whole it is clear that that this 30-foot road was understood to be a County Road and the separating boundary line between the parties. By its own words, the Court at the time of issuance of the order, believed that road to be an “unpaved county road.” (Id. at 12). To be sure, the Court needed only look within the four corners of the deed to show that Quiet Title Order does not confer title to the “unpaved county road” on the Respondent. See *Gardner*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987)

Further, the Beaufort County is not a named party in the quiet title action, nor is it named in the Quiet Title Order which is indicative that if the Court intended to convey the 30-foot road, it did so without consent or knowledge of the County. Nothing in the record supports the conclusion that the County has conferred title to this dirt road on any person, at any time.

Even if the County had been a party to either the Quiet Title Order or the instant case, the closure of the road would have been improper. The South Carolina Code of Laws requires an interested party to comply with the statute set forth in S.C. Code §57-9-10 to close any street, road, or highway whether opened or not. Nothing in the record indicates that the Appellant or Respondent complied with this statute.

Thus, the Court made an error of law in interpreting the Quiet Title Order to find that the Howard Property includes the dirt road and the boat landing.

**III. The Circuit Court erred in granting Partial Summary Judgment because a question of material fact exists as to the ownership of the road and boat landing.**

In the alternative, if this Court finds the Quiet Title Order to be ambiguous as to the ownership of the road and boat landing, the preponderance of the evidence in the record does not

support the Circuit Court's finding that the Respondent owns the dirt road or the boat landing. As to the dirt road, no plat submitted states that Respondent is the owner. In addition, the boat landing is not mentioned in any evidence submitted into the record.

A reviewing court determines, as a matter of law, whether the language in a deed is ambiguous. *Santoro v. Schulthess*, 384 S.C. 250, 272, 681 S.E.2d 897, 908 (Ct.App.2009). A reviewing court considers questions of law de novo. *Id.* "A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one, i.e., when it is obscure in meaning through indefiniteness of expression, or containing words having a double meaning." 30 S.C. Jur. *Contracts* § 32 Ambiguity (1999).

Additionally, if the reviewing court determines a deed is ambiguous, it must interpret the deed. "If the action is viewed as interpreting a deed, it is an equitable matter and the appellate court may review the evidence to determine the facts in accordance with the court's view of the preponderance of the evidence." *Slear v. Hanna*, 329 S.C. 407, 410–11, 496 S.E.2d 633, 635 (1998).

The preponderance of the evidence supports that the road is a County Road. As clarified above, the Quiet Title Order contemplates that the road is a County Road. See Kemmerlin Jr., J., Decree of Title Clearance, *Gardner*, Case No. 89-CP-07-879, November 20, 1990 at 11. However, the lower court determined that the road was owned in fee simple by the Respondent. (Order Grant Partial Summ. J. to Resp't, pp. 2 ¶2). Although the Circuit Court declined to find that the Quiet Title Order was ambiguous, by its reference to the outside plats, that the court looked beyond the language of the document itself to determine the meaning of the Quiet Title Order. (Order Grant Partial Summ. J. to Resp't, Findings of Fact, pp. 1).

The only evidence in the record supporting the Respondent's contention that he owns the road is found in a plat prepared at the behest of the Respondent in September of 2017 in which the

Respondent claims the area which contains the road. (See Beaufort County R.O.D. Plat Book 147 at Page 133, September 19, 2017). All other plats submitted indicate that the road is an extension of Warsaw Island Drive, which correlates with the language found in the Quiet Title Order. (See Beaufort County R.M.C. Plat Book 52 at Page 36, February 6, 1995 and Beaufort County R.O.D. Plat Book 137 at Page 156, October 31, 2013). The submitted plats only serve to create a question of material fact.

Moreover, with regard to the boat landing, there is simply no evidence in the record indicating it was part of the Howard Property. The Respondent himself did not even assert ownership of the boat landing in his Motion for Partial Summary Judgment. (See Resp't Mot. Summ. J. ¶1.) Nor did he in the plat in which he claimed ownership of the road. (See Beaufort County R.O.D. Plat Book 147 at Page 133, September 19, 2017). The boat landing is completely missing from the Quiet Title Order which was submitted to the Court. In addition, although the boat landing is not claimed on the plat in which Respondent claimed ownership to the road, both of the other plats reviewed show that Appellant's father claimed ownership of the boat landing which inevitably creates an issue of material fact as to the ownership of the boat landing. (See Beaufort County R.M.C. Plat Book 52 at Page 36, February 6, 1995 and Beaufort County R.O.D. Plat Book 137 at Page 156, October 31, 2013). Finally, the boat landing was not mentioned in the pleadings so the Appellant could not have been expected to be aware that it was at issue in the case.

Therefore, a question of material fact exists regarding the ownership of the road and the boat landing making summary judgment improper.

- IV. The Respondent failed to meet the factual burden to meet any of the four elements laid out to prove trespass to try title, thus the Order of Partial Summary Judgment should be reversed.**

An action brought for the primary purpose of determining title to a disputed land is in the nature of a trespass action to try title, which is an action at law. *Cummings v. Varn*, 307 S.C. 37, 413 S.E. 2d 829 (1992); *Corely v. Looper*, 287 S.C. 618, 340 S.E. 2d 556 (Ct. App. 1986). The Respondent, by filing the Motion for Summary Judgment, and claiming ownership of the road and the boat landing, and thus had the burden of proof to prove perfect title. *Baker v. Mutual Loan Inv. Co.*, 218 S.C. 47, 61 S.E.2d 387 (1950); *Ford v. Atlantic Coast Line R. Co.*, 169 S.C. 41, 168 S.E. 143. (1932).

In an action of trespass to try title, the party in actual possession of the disputed property is regarded as the rightful owner of the property until the opposing party proves perfect title, and a mere prima facie showing of paper title by the opposing party is not enough. *Cummings*, 413 S.E. 2d at 832. The party claiming ownership “must make out a complete title, and must recover on the strength of that title, and not upon the weakness of the title of his adversary, and there is no onus whatever upon the defendant. He may fold his arms, and await the complete title of the party claiming ownership, in fault of which his possession cannot be disturbed.” *Brown v. Moore*, 26 S.C. 160 at 164, 2 S.E. 9 at 11 (1887).

There are four ways in which a plaintiff in an action of trespass to try title may acquire title to land sufficient to oust a defendant claiming the same land. *Watson v. Suggs*, 437 S.E. 2d 172, 313 S.C. 291 (Ct. App. 1993). First, Plaintiff may show a grant from the state to someone, and then by successive deeds to him. This chain of conveyances is called perfect legal paper title. *Id.* (citing *Haithcock v. Haithcock*, 123 S.C. 61, 69 (1923)). Second, Plaintiff may trace his title to a common source from whom both he and the defendant claim through separate chains of title. *Id.* If the plaintiff can show an earlier deed deriving from a common source, he may dispossess a defendant in possession. *Id.* (citing *Brown*, 26 S.C. 160, 2 S.E. 9 (1887)). The other two ways involve adverse possession and are not applicable to this case.

As stated above, the Respondent submitted no evidence into the record stating that he had legal title to the Howard Property. (Supra at Section I.) The Respondent did submit a deed conveying the Appellant's property from the Appellant's father. (Mot. Hr'g Tr. 6) However, as stated above, the Respondent was required to make out a complete title, and recover on the strength of that title, and not upon the weakness of the title of his adversary.

By failing to present any evidence showing that the Howard Property included the road or the boat landing, the Respondent failed to meet the factual burden to establish the chain of conveyances required to show perfect legal title, nor did he trace his claim to the road or boat landing to a common source, thus the Order of Partial Summary Judgment should be reversed.

**V. The Circuit Court erred in granting summary judgment because the question of a property line is one of fact for a jury to decide.**

Respondent's Motion for Summary Judgment sought to determine the boundary lines of the Gardner and Howard Properties. The location of the Gardner and Howard Property boundaries is the paramount issue of this case, as those lines will determine whether or not a trespass has been committed. On Page 1 of the Order the Court states that to make its determination of the boundary lines, the Court relied on "a plat prepared for Charles Gardner dated February 6, 1995 recorded in Plat Book 52 at Page 36...". (Order Grant Partial Summ. J. to Resp't, pp. 1). A plain reading of this plat states that the Road is owned and claimed by Leroy Gardner. This plat constitutes a recorded document that disputes the factual finding that Respondent owns the road.

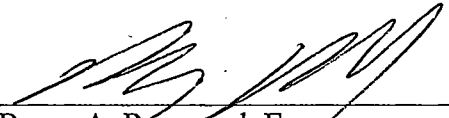
When an allegation of paramount title is raised in the answer, the case should be sent to the jury. *Cummings v. Varn*, (Toal, J. dissenting) 307 S.C. at 44 footnote 1 (citing *Every v. Hallow*, 265 S.C. 474, 219 S.E.2d 909 (1975) (issue of title to real estate can be raised by complaint or by answer and if it is so raised, it must go to the jury). Where the land lies is a question of fact for the jury. *Id.* at 45 (citing *Coast v. Matthews*, 2 Nott. And McCord 99 (1819).

Due to the factual question, summary judgment was improper in this case as this is a case for the jury to decide. The Appellate Court should reverse and remand this case for adjudication of the facts.

#### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

February 26, 2019



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Perry M. Buckner, III Circuit Court Judge

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FEB 28 2019

**SC Court of Appeals**

Case No. 2017-CP-07-02110

Taylor Reuben Adams,..... Respondent


v.

Charles Willis Gardner,..... Appellant

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief and Designation of Matter on Taylor Reuben Adams by depositing a copy of it in the United States Mail, postage prepaid, on February 26<sup>th</sup>, 2019, addressed to his attorney of record, Terry Finger, Post Office Box 24005, Hilton Head Island, South Carolina 29925.

February 26, 2019

  
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February 26, 2019

**Delivery Via USPS First Class Mail**

The Honorable Jenny Abbot Kitchings  
Post Office Box 11629  
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RE: Charles Gardner v. Taylor Adams  
Appellate Case No. 2018-001635

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SC Court of Appeals

Dear Ms. Kitchings:

I hope this letter finds you well. Enclosed for filing, please find the Appellant's Initial Brief as well as the Designation of Matter to Be Included in the Record on Appeal.

If you should have any questions or concerns, do not hesitate to contact me.

Sincerely,

Bryan A. Raymond, Esq  
For Cobb Dill & Hammett, LLC

Enclosures: Appellant's Initial Brief; Designation of Matter to Be Included in the Record on Appeal; Proof of Service

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