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no respondents brief

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-6400

Transportation Associates

, Inc.,

Respondent,

v.

Joseph T. Bishop

Appellant.

RECEIVED

OCT 07 2013

SC Court of Appeals

RECORD ON APPEAL

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-332-0026
Attorney for Appellants

Other Counsel of Record:
Ronald G. Bruce
P.O. Box 450
Greer, SC 29652
Attorney for Respondent

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OCT 10 2013

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Respondent,

v.

Joseph T. Bishop

Appellant.

RECORD ON APPEAL

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellant

Other Counsel of Record:
Ronald G. Bruce
P.O. Box 450
Greer, SC 29652
Attorney for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT

CASE NO: 2011-CP-23-6400

2011 SEP 27 PM 2:04

Transportation Associates, Inc

Plaintiff

vs.

Joseph T. Bishop

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Ronald G. Bruce, P.A.
_____, Bar No. 945
Address: 200 N. Main St
Greenville, SC 29650
Phone: 877-688-7648 Fax 877-9648
E-mail: _____ Other: _____

Defendant's Attorney:
_____, Bar No. _____
Address: _____
Phone: _____ Fax _____
E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

9/27/11
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

COPY

STATE OF SOUTH CAROLINA)
)
~~COUNTY OF GREENVILLE~~)

IN THE COURT OF COMMON PLEAS
CASE NO.

2011-CP-23-6400

Transportation Associates, Inc.,)

PETITIONER)

VS)

Joseph T. Bishop,)

RESPONDENT)

SUMMONS

FILED CLERK OF COURT
GREENVILLE, S.C.
SEP 27 2011

2011 SEP 27 P 2:01

TO THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Petition on the subscriber at his office at 200 North Main Street, Greer, South Carolina, 2950, within thirty (30) days after service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

By: _____

Ronald G. Bruce, P.A.
Attorney for Plaintiff
P. O. Box 450
Greer, SC 29652

Greer, South Carolina

9-26, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-23-6400

Transportation Associates, Inc.,)

PETITIONER)

VS)

Joseph T. Bishop,)

RESPONDENT)

PETITION AND RULE TO
SHOW CAUSE

The Petitioner, through its attorney, would respectfully show unto the Court:

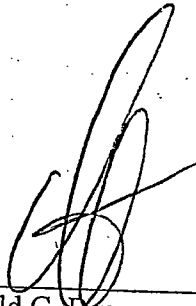
1. That the Petitioner is a duly organized corporation under the laws of the State of South Carolina.
2. Upon information and belief, the Respondent is a citizen and resident of the County of Greenville, State of South Carolina.
3. That on August 31, 1992, the Respondent herein conveyed title to the Petitioner to certain real estate located in Greenville County. The deed was recorded in the ROD Office for Greenville County on September 1, 1992 in Book 1490, Page 406. A copy of said deed is attached hereto as Petitioner's Exhibit A and made a part hereof.
4. In addition to the above referred to real estate, the Respondent conveyed the Petitioner a right-of-way providing the Petitioner with access to South Carolina Highway 14 suitable for the use of commercial vehicles of all types over the roadway shown the the plat recorded in Plat Book 23-0, Page 6, and designated as "Kateline Way (Private Drive)".

5. That the Respondent has obstructed said right-of-way by the placement of concrete blocks resulting in commercial vehicles having a difficult time safely accessing the said right-of-way and causing several accidents.

6. That the Petitioner is informed and believes that the Respondent should show cause as to why this Court should not issue its Order requiring said Respondent to remove the obstacle to Petitioner's access and right-of-way and compensate Petitioner for any and all damages resulting from said obstruction of right-of-way.

WHEREFORE, Petitioner prays that this Court issue its Order requiring Respondent to remove the obstacle to Petitioner's legal right-of-way and compensate Petitioner for any damages resulting from said obstruction.

BY:



Ronald G. Bruce
Attorney for Petitioner
200 N. Main Street
Greer, SC 29650
864-877-0207

9-26

, 2011

STATE OF SOUTH CAROLINA

) VERIFICATION

COUNTY OF GREENVILLE

PERSONALLY appeared before me,

Ronald G. Bruce, who

being first duly sworn, deposes and says: That he is the attorney in the foregoing action; and that the matters contained therein are to the best of his knowledge true as based on the facts supplied by the Plaintiff.

Ronald G. Bruce
 ATTORNEY FOR PLAINTIFF
 P. O. Box 450
 Greer, SC 29652
 Telephone: 864-877-0207
 Fax: 864-877-5648

FILED
 CLERK OF COURT
 GREENVILLE COUNTY
 SEP 27 2011

2011 SEP 27 P 2:01

SWORN TO and subscribed before me

this 26 day of Sept, 2011

Jelle W. [Signature]
 NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 08-31-20

1490-406

11-205-528.3-1-16.2
 470 11-205-528.3-1-16.2 → 1-228
 out of 11-205-528.3-1-16.1

8522 10-6

9901

Grantee's Address: 1879 South Highway 14, Greer, SC 29662

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 JUANIE J. TANKERSLEY

KNOW ALL MEN BY THESE PRESENTS, that JOSEPH T. BISHOP (hereinafter referred to as "Grantor"), in consideration of Four Hundred Nineteen Thousand Two Hundred Ninety and NO/100 Dollars (\$419,290.00), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto TRANSPORTATION ASSOCIATES, INC. (hereinafter referred to as "Grantee"), its successors and assigns forever:

ALL that piece, parcel or lot of land in Chick Springs Township, County of Greenville, State of South Carolina, located near the City of Greer, near S.C. Highway 14, and being shown as Parcels 1, 2, 3 and 4 on a plat entitled "Survey for Service Transport, Inc.", prepared by Freedland-Clintacales & Associates, Inc., dated August 13, 1992, and recorded in the REC Office for Greenville County, South Carolina, of even date and simultaneously herewith in Plat Book 23-04 Page 6, and having the metes and bounds, courses and distances as shown thereon. For a more particular description, reference is hereby made to said plat, including a right-of-way providing access to S.C. Highway 14 suitable for the use of commercial vehicles of all types (with rubber tires only) over the roadway shown on said plat as "Ravely Way" (Private Drive).

THIS is the a portion of the identical property conveyed to Mortgagee herein by deed of Thelma Farmer by Attorney in Fact Eddie Lee F. Masters dated April 3, 1973, and recorded in the REC Office for Greenville County, South Carolina, on May 8, 1973, at 12:31 p.m., in Deed Book 974 at page 157; the identical property conveyed to Mortgagee herein by deed of Vickie S. Morris dated September 23, 1974, and recorded in the REC Office for Greenville County, South Carolina, on September 24, 1974, at 3:53 p.m., in Deed Book 1007 at Page 219; and the identical property conveyed to Mortgagee herein by deed of Owen Burrell dated April 7, 1988, and recorded in the REC Office for Greenville County, South Carolina, on April 8, 1988, at 4:28 p.m., in Deed Book 1321 at Page 593.

THIS conveyance is made subject to any restrictions, reservations, zoning ordinances, rights of way or easements that may appear of record, on the recorded plat(s) or on the premises.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto Grantee, and Grantee's successors and assigns, forever. And, Grantor does hereby bind himself and his heirs, successors, executors and administrators to warrant and forever defend all and singular said premises unto Grantee and Grantee's successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's hand and seal this 31st day of August, 1992.

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF:

Thelma Farmer
Eddie Lee F. Masters

Joseph T. Bishop
 Joseph T. Bishop, Grantor

STATE OF SOUTH CAROLINA
 DOCUMENTARY
 STAMP TAX
 90.71
 STATE OF SOUTH CAROLINA
 DOCUMENTARY
 STAMP TAX
 999.99

COUNTY
 461.45

-Page 1 of 2-

14328 MY-2

BOOK 1490 PAGE 407

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named JOSEPH T. BISHOP, Grantor sign, seal and as his act and deed deliver the within written Deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
31st day of August, 1992.

Charles L. Robinson
Notary Public for South Carolina
My Commission Expires: 3/31/93

F. K. May Jr.

61653

FILED FOR RECORD IN GREENVILLE
COUNTY SC RMC OFFICE AT 10:26 AM
10/02/92 RECORDED IN DEED
BOOK 1490 PAGE 0406
OOC # 92061653

14328 MV.2

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CASE NO.

2011-CP-23-6400

Transportation Associates, Inc.,

PETITIONER

VS

Joseph T. Bishop,

RESPONDENT

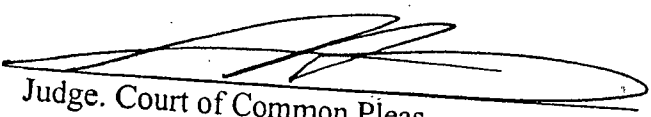
ORDER FOR RULE TO SHOW CAUSE

2011 OCT -6 PM 1:48

Now, therefore, upon reading and filing of the within Petition and upon motion of
Ronald G. Bruce, attorney for the Petitioner,

IT IS ORDERED THAT Joseph T. Bishop or any heir or assign, do show cause before
the undersigned on the 24th day of October, 2011, at 11:30 AM o'clock
_____ or as soon thereafter as counsel may be heard as to why it should not grant the relief
prayed for in its Petition which is attached hereto.

IT IS FURTHER ORDERED service of the Petition and Rule to Show Cause be made
by the Sheriff, his deputy, or by any other person not less than eighteen (18) years of age, that is
not an attorney in or a party to the action, pursuant to Rule 4, *South Carolina Rules of Civil
Procedure*, and it is to be served on Joseph T. Bishop.


Judge, Court of Common Pleas

2158

4 OCT, 2011

Served
OCT 8

2011

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-23-6400

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FALL 8

Transportation Associates, Inc.,

PETITIONER

ANSWER TO PETITION AND
RULE TO SHOW CAUSE

VS

Joseph T. Bishop,

RESPONDENT

In the above case, the Respondent pleads as follows:

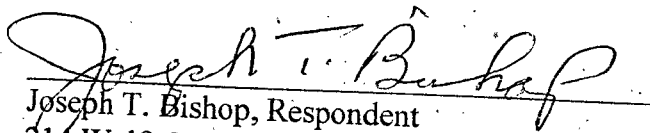
1. Respondent has no knowledge as to whether the Petitioner is a duly organized corporation under the laws of the State of South Carolina.
2. The Respondent is a citizen and resident of the County of Greenville, State of South Carolina.
3. That on August 31, 1992 the Respondent did convey to the Petitioner certain real estate located in Greenville County as recorded in the ROD Office for Greenville County on September 1, 1992 in Book 1490, Page 406.
4. That in addition to the above-referred to real estate, the Respondent did convey to the Petitioner a right-of way-providing the Petitioner with access to South Carolina Highway 14 suitable for the use of commercial vehicles of all types (with rubber tires only) over the roadway shown on the plat recorded in Plat Book 23-0, Page 6, and designated as "Katelin Way (private drive)".
5. That Respondent has placed concrete blocks beside the right-of-way not on the right-of-

way, to prevent commercial vehicles from coming off the right-of-way and onto Respondent's property causing damage to said property (see attached photos and drawing). Respondent has tried on several occasions to get the Highway Department to widen the drive onto the right-of-way. However, Highway Department states the present drive is a standard drive and cannot be widened at their expense.

6. That Respondent believes he has the right to protect his property from damage by placing the concrete blocks beside the right-of-way which in no way obstructs the Petitioner's access and right-of-way.

WHEREFORE, Respondent prays that this Court issue its Order denying the Petitioner's request to have Respondent remove the concrete blocks.

BY:

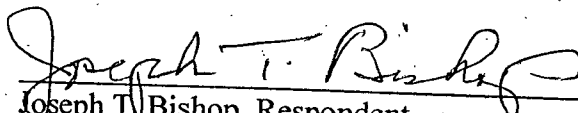


Joseph T. Bishop, Respondent
214 Wolfe Rd
Greer SC 29650
864-877-9760

October 21, 2011

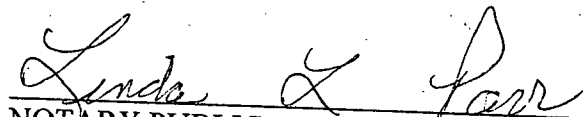
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) VERIFICATION

PERSONALLY appeared before me, Joseph T. Bishop, who being first duly sworn,
deposes and says that he is the Respondent in the foregoing action and that the matters contained
in the Answer to the Petition and Rule to Show Cause are to the best of his knowledge true.



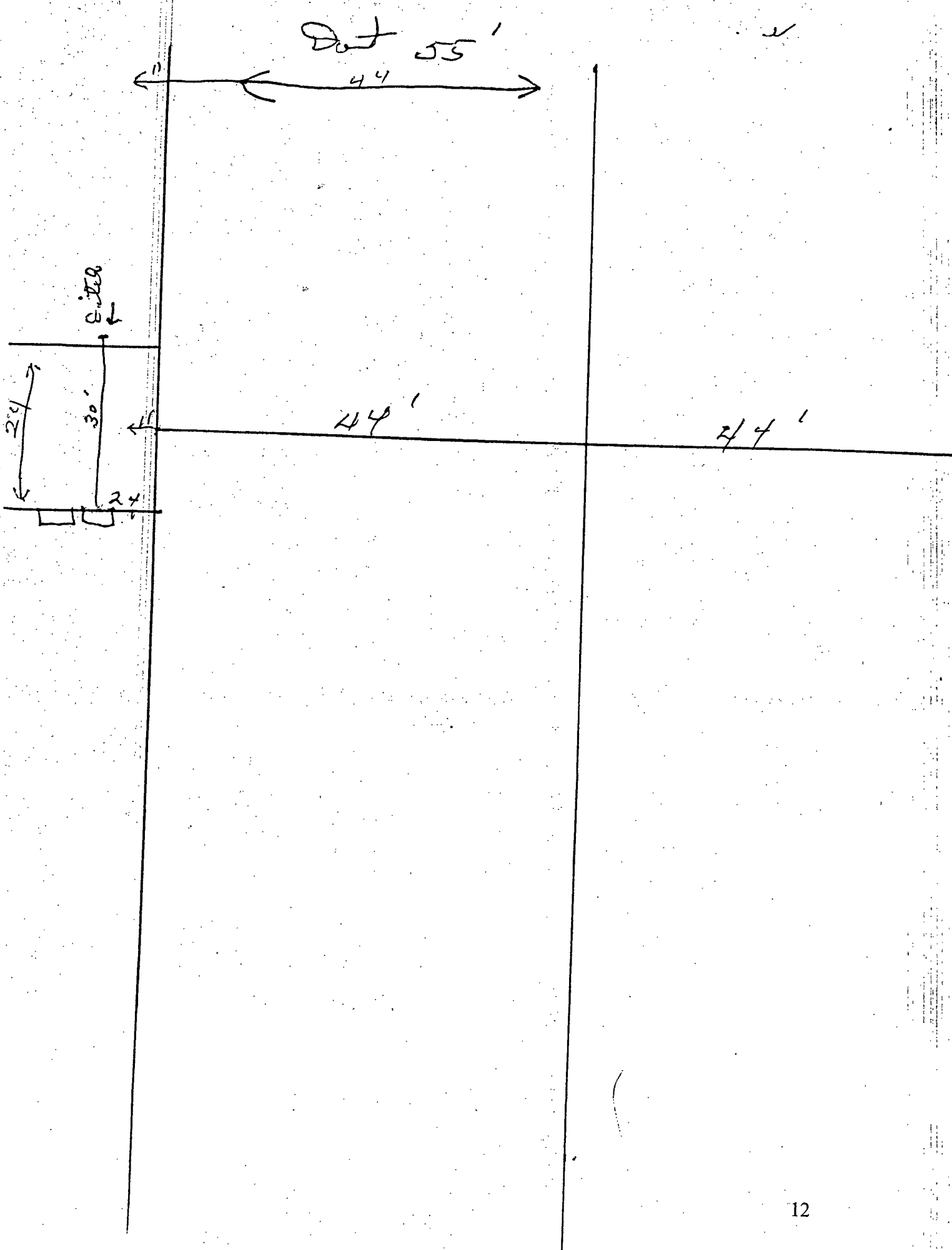
Joseph T. Bishop, Respondent
214 Wolfe Rd
Greer SC 29650
864-877-9760

SWORN TO and subscribed before me this
21st day of October, 2011.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 04/07/2019



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE 2012 NOV -8 P 2:32

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP2306409

Transportation Associates Inc vs. Joseph T Bishop

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 8th day of November, 2012, and a copy mailed first class this 8th day of November, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Ronald G. Bruce PO Box 450 Greer, SC 29652

ATTORNEY(S) FOR THE PLAINTIFF(S)

Joseph T Bishop 214 Wolfe Rd Greer, SC 29650

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of C
- Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED
2012 NOV -8 P 1:08

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Transportation Associates, Inc.,

Case No. 2011-CP-23-6400

Plaintiff,

ORDER

vs.

Joseph T. Bishop,

Defendant.

I. Factual Background

By deed dated October 2, 1991, Joseph T. Bishop conveyed to Plaintiff Transportation Associates, Inc. a parcel of real property located in the City of Greer, South Carolina. The deed referenced a recorded plat "including a right of way providing access to S.C. Highway 14 suitable for the use of commercial vehicles of all types (with rubber tires only) over the roadway shown on said plat as "Katelin Way (Private Drive)." The referenced plat depicted the paved roadway, but listed no precise dimensions as to its width, although it did contain a scale.

Over time, Plaintiff's trucks have driven beyond the currently paved surface of Katelin Way as they execute the turn on Katelin Way from Highway 14. Tiring of what he perceived as damage to his property from these excursions beyond the granted right of way, in 2010 Bishop placed several enormous concrete blocks adjacent to the currently paved surface of Katelin Way on his property. According to Bishop, these blocks are located 15 to 18 inches off the paved road.

ENTERED COMPUTER

Handwritten signature

On September 17, 2011 Plaintiffs filed a Petition and Rule to Show Cause seeking a court order requiring Mr. Bishop to remove the blocks or otherwise cease obstructing the right of way.

Bishop filed an Answer alleging in part as follows:

[I have] placed concrete blocks beside the right of way not on the right of way, to prevent commercial vehicles from coming off the right of way and onto [my] property causing damage...[I have] tried on several occasions to get the Highway Department to widen the drive onto the right of way. However, the Highway Department states the present drive is a standard drive and cannot be widened at their expense....

On October 24, 2011, the Court heard argument on the Petition. Noting that the issue turned on the scope of an ambiguous easement affecting seemingly reasonable businessmen who occupied adjacent properties, the Court ordered the parties to mediate. Mediation proved unfruitful, and on September 5, 2012 the parties returned to court requesting a ruling.

Having the benefit of the parties' post-hearing briefs, the testimony presented at the initial hearing, the deed, pleadings and all evidence of record and applicable law, the Court makes the following findings of fact and conclusions of law.

II. Law/Analysis

Determining the scope of an easement is an action in equity. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). The extent of an easement is determined by its language. Plott v. Justin Enterprises, 374 S.C. 504, 649 S.E.2d 92 (Ct. App. 2007). If the language in the grant of the easement is clear and unambiguous, the grant must be construed according to the terms the parties have used. S.C. Public Service Authority v. Ocean Forest Inc., 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). The Court determines the intent of the parties by fair interpretation of the grant creating the easement. Sandy Allen Corp. v. Ragsdale, 246 S.C. 414, 420, 143 S.E.2d 803 (1965). Here, the language is ambiguous concerning the scope of the easement as no width was expressly included. This ambiguity must be interpreted in light of

good faith and reasonableness as to what was the intent of the parties to the original agreement. Moreover, the existence of the ambiguity allows the Court to consider extrinsic evidence concerning the parties' intent. See Martin v. Bay 732 S.E.2d 667, 2012 WL4761427 (S.C Ct. App. Op. No. 5035, filed September 19, 2012).

The Court cannot expand the scope of an easement or otherwise impose an unreasonable burden on the grantor's property. Moreover, where language of an easement is capable of more than one construction, the one that least restricts the property should be adopted. Tupper v. Dorchester County, 487 S.C.2-1 187 (1997). When a deed grants a right of way, but does not fix its width, strong consideration is given to "what is reasonable, convenient, and necessary to accomplish the purpose for which the right of way was created" Patterson v. Duke Power Co., 256 S.C. 479, 183 S.E.2d 122 (1971); Moore v. Reynolds, 285 S.C. 574, 578, 330 S.E.2d 542, (Ct.App. 1985); See also 12 S.C. Juris. Easements §22.

Mr. Bishop contends that the right of way extends no further than 25 feet in width and is confined to the paved portion of Katelin Way. For support, he cites the plat, maintaining that the right of way cannot exceed the width of the paved portion of Katelin Way as shown on the plat.

This argument has several defects. First, there has been no evidence presented that the width of the paved portion of Katelin Way as depicted on the Plat does not exceed twenty-five feet. While there is a scale among the legends on the Plat, there has been no testimony that twenty-five foot width is the correct measurement according to the scale. It may be gleaned from reviewing the Plat that the width according to the scale does not exceed fifty feet, but it is unclear about whether it could be between twenty-five and fifty feet. No evidence was presented to clarify this ambiguity. Cf. Giles v. Parker, 304 S.C. 69, 403 S.E.2d 130 (Ct. App. 1991)

9/14

(rejecting contention that trial judge should have calculated width of road based on plat scale where surveyor testified width could not be ascertained by such measurement).

Second, while Mr. Bishop relied on the actual paved portion as being the outer limits of the right of way, the photographs he presented as evidence at the October 24, 2011 hearing show that the concrete blocks are in a location where the road ^{no way} appears to have been paved in the past. Mr. Theo Durham credibly testified on behalf of Transportation Associates that, due to Mr. Bishop's recent placement of the concrete blocks, his company's 80-foot tractor-trailers now have to stop in traffic on Highway 14 and swing into the left lane to access Katelin Way. He stated this has caused two accidents where the trailers have been rear-ended by other vehicles. He further noted that for many years the trucks had been allowed to cross the area now occupied by the concrete blocks.

The court finds the parties intended to allow Transportation Associates, Inc. to have reasonable access across the right of way for its rubber-tired commercial trucks. Mr. Bishop complains that Transportation Associates is the source of the problem, which he contends arose ^{got truck} when they began using double tractor-trailers. In the easement, however, Mr. Bishop agreed to access commercial vehicles "of all types." It is unfortunate that the parties have become embroiled in this dispute over the exact width of the right of way when that matter could have been resolved by including a precise width in the deed or on the plat. Lawsuits, however, are often the collection area for imperfect foresight.

The court is mindful that "the law is jealous of a claim to an easement, and the party asserting such a claim must prove his right to it clearly," Polson v. Ingram, 22 S.C. 541 (1885). A reasonable construction of the easement would be to allow it to be limited to 35 feet, with the provision that the Plaintiff must provide adequate landscaping or other suitable ground cover for

Hit
425

Measure
areas between 35 and 40 feet. The 35 foot width appears to be within the area of Katelin Way that has been previously paved, as shown by photographs in evidence. This width is also consistent with the mutual intent of the parties that Transportation Associates, Inc. have reasonable access for its commercial trucks. Mr. Bishop shall, within 30 days of the date of this order, remove the blocks and any other obstructions within the 35 feet width.

IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

November 8, 2012.
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2200211

2013 JAN 15 P 2:10

11-6400

Transportation Associates,
Inc.

Joseph T. Bishop

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON):
☐ Rule 43(k), SCRCP (Settled); ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON):
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court

Defendant moved for the Court to reconsider its November 8, 2012 Order. The Court grants the motion and has issued an Amended Order.

This order ☐ ends ☒ does not end the case.

ORDER INFORMATION

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge, may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]

Circuit Court Judge

2138

Judge Code

1/2/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on 1/16/13, and a copy mailed first class or placed in the appropriate attorney's box on 1/15/13, to attorneys of record or to parties (when appearing pro se) as follows:

Ronald G. Bruce
PO Box 460
Greer, SC 29652

Joseph T. Bishop
214 Wolfe Road
Greer, SC 29650

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer
Greenville County Clerk Of
Court - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Transportation Associates, Inc.,

Plaintiff,

vs.

Joseph T. Bishop,

Defendant.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JAN 15 2011

P 2:10

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2011-CP-23-6400

AMENDED ORDER

I. Factual Background

By deed dated October 2, 1991, Joseph T. Bishop conveyed to Plaintiff Transportation Associates, Inc. a parcel of real property located in the City of Greer, South Carolina. The deed referenced a recorded plat "including a right of way providing access to S.C. Highway 14 suitable for the use of commercial vehicles of all types (with rubber tires only) over the roadway shown on said plat as "Katelin Way (Private Drive)." The referenced plat depicted the paved roadway, but listed no precise dimensions as to its width, although it did contain a scale.

Over time, Plaintiff's trucks have driven beyond the currently paved surface of Katelin Way as they execute the turn on Katelin Way from Highway 14. Tiring of what he perceived as damage to his property from these excursions beyond the granted right of way, in 2010 Bishop placed several enormous concrete blocks adjacent to the currently paved surface of Katelin Way on his property. According to Bishop, these blocks are located 15 to 18 inches off the paved road.

JTB
11-15

On September 17, 2011 Plaintiffs filed a Petition and Rule to Show Cause seeking a court order requiring Mr. Bishop to remove the blocks. Bishop filed an Answer alleging in part as follows:

4 - case 2 [I have] placed concrete blocks beside the right of way not on the right of way, to prevent commercial vehicles from coming off the right of way and onto [my] property causing damage...[I have] tried on several occasions to get the Highway Department to widen the drive onto the right of way. However, the Highway Department states the present drive is a standard drive and cannot be widened at their expense....

On October 24, 2011, the Court heard argument on the Petition. Noting that the issue turned on the scope of an ambiguous easement affecting seemingly reasonable businessmen who occupied adjacent properties, the Court ordered the parties to mediate. Mediation proved unfruitful, and on September 5, 2012 the parties returned to court requesting a ruling.

Having the benefit of the parties' post-hearing briefs, the testimony presented at the initial hearing, the deed, pleadings and all evidence of record and applicable law, the Court makes the following findings of fact and conclusions of law.

II. Law/Analysis

Determining the scope of an easement is an action in equity. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). The extent of an easement is determined by its language. Plott v. Justin Enterprises, 374 S.C. 504, 649 S.E.2d 92 (Ct. App. 2007). If the language in the grant of the easement is clear and unambiguous, the grant must be construed according to the terms the parties have used. S.C. Public Service Authority v. Ocean Forest Inc., 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). The Court determines the intent of the parties by fair interpretation of the grant creating the easement. Sandy Allen Corp. v. Ragsdale, 246 S.C. 414, 420, 143 S.E.2d 803 (1965). Here, the language is ambiguous concerning the scope of the easement as no width was expressly included. This ambiguity must be interpreted in light of

714 #285

good faith and reasonableness as to what was the intent of the parties to the original agreement. Moreover, the existence of the ambiguity allows the Court to consider extrinsic evidence concerning the parties' intent. See Martin v. Bay 732 S.E.2d 667, 2012 WL4761427 (S.C Ct. App. Op. No. 5035, filed September 19, 2012).

The Court cannot expand the scope of an easement or otherwise impose an unreasonable burden on the grantor's property. Moreover, where language of an easement is capable of more than one construction, the one that least restricts the property should be adopted. Tupper v. Dorchester County, 487 S.C.2-1 187 (1997). When a deed grants a right of way, but does not fix its width, strong consideration is given to "what is reasonable, convenient, and necessary to accomplish the purpose for which the right of way was created" Patterson v. Duke Power Co., 256 S.C. 479, 183 S.E.2d 122 (1971); Moore v. Reynolds, 285 S.C. 574, 578, 330 S.E.2d 542, (Ct.App. 1985); See also 12 S.C. Juris. Easements §22.

Mr. Bishop contends that the right of way extends no further than 25 feet in width and is confined to the paved portion of Katelin Way. For support, he cites the plat, maintaining that the right of way cannot exceed the width of the paved portion of Katelin Way as shown on the plat.

✓ This argument has several defects. First, there has been no evidence presented that the width of the paved portion of Katelin Way as depicted on the Plat does not exceed twenty-five feet. While there is a scale among the legends on the Plat, there has been no testimony that twenty-five foot width is the correct measurement according to the scale. It may be gleaned from reviewing the Plat that the width according to the scale does not exceed fifty feet, but it is unclear about whether it could be ^{Produce} ~~between~~ ^{Very Poorly Done} between twenty-five and fifty feet. No evidence was presented to clarify this ambiguity. Cf. Giles v. Parker, 304 S.C. 69, 403 S.E.2d 130 (Ct. App. 1991)

JH #385

(rejecting contention that trial judge should have calculated width of road based on plat scale where surveyor testified width could not be ascertained by such measurement).

Second, while Mr. Bishop relied on the actual paved portion as being the outer limits of the right of way, the photographs he presented as evidence at the October 24, 2011 hearing show that the concrete blocks are in a location where the road appears to have been paved in the past. Mr. Theo Durham credibly testified on behalf of Transportation Associates that, due to Mr. Bishop's recent placement of the concrete blocks, his company's 80-foot tractor-trailers now have to stop in traffic on Highway 14 and swing into the left lane to access Katelin Way. He stated this has caused two accidents where the trailers have been rear-ended by other vehicles. He further noted that for many years the trucks had been allowed to cross the area now occupied by the concrete blocks. *Not 4 cars.*

The court finds the parties intended to allow Transportation Associates, Inc. to have reasonable access across the right of way for its rubber-tired commercial trucks. Mr. Bishop complains that Transportation Associates is the source of the problem, which he contends arose when they began using double tractor-trailers. *never seen one* In the easement, however, Mr. Bishop agreed to access commercial vehicles "of all types." It is unfortunate that the parties have become embroiled in this dispute over the exact width of the right of way when that matter could have been resolved by including a precise width in the deed or on the plat. Lawsuits, however, are often the collection area for imperfect foresight.

The court is mindful that "the law is jealous of a claim to an easement, and the party asserting such a claim must prove his right to it clearly," Polson v. Ingram, 22 S.C. 541 (1885). The Court finds that the concrete blocks are within the area of Katelin Way that has been previously paved, that appears to be approximately 35 feet in width as shown by photographs in evidence. The

width is also consistent with the mutual intent of the parties that Transportation Associates, Inc. have reasonable access for its commercial trucks. Mr. Bishop shall, within 30 days of the date of this order, remove the blocks.

IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

January 2, 2013.
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-23-6400

2012 NOV 15 12:02

Transportation Services, Inc.

Plaintiff,

vs.

Joseph T. Bishop

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Ronald Bruce, Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Randall S. Hiller, Bar No. 2513

Address: _____

850 Wade Hampton Blvd., Greenville, SC

Phone: 232-0026 Fax 242-4692

E-mail: rsh@rshpa.org Other: ahk@rshpa.org

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Reconsider

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Randall S. Hiller
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 14, 2012

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2011-CP-23-6400

Transportation Services, Inc.,)
Plaintiff)

v.)

Joseph T. Bishop,)
Defendant)

MOTION TO RECONSIDER

2012 NOV 15 P 12:02

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JILL S. WICKENS-SMITH

TO: RONALD G. BRUCE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

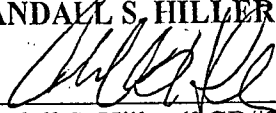
YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas, Thirteenth Judicial Circuit, Greenville County Courthouse, Greenville, South Carolina, within Ten (10) days of the date of this Motion, or as soon thereafter as directed by this Honorable Court, for an Order altering and amending the Order of this Honorable Court, dated November 8, 2012, and filed for record on November 8, 2012, as follows:

1. That the Court modify the Order by deleting any reference to the establishment of the easement area or width as the relief granted exceeds the prayer for relief in the original petition as the only relief requested and the only evidence presented was "remove the obstacle to petitioner's legal right of way".

This Motion is made pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure, as well as all other applicable law.

(signature on following page)

RANDALL S. HILLER, P.A.



Randall S. Hiller (SCB#2513)

850 Wade Hampton Blvd.

Greenville, SC 29609

864-232-0026

864-242-4692 Fax

Attorney for Defendant

Greenville, South Carolina

November 14, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2011-CP-23-6400

Transportation Services, Inc.,)
Plaintiff)
v.)
Joseph T. Bishop,)
Defendant)

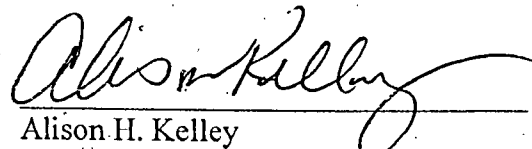
CERTIFICATE OF MAILING

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 NOV 15 P 12:22
JILL B. WICKENS/MEB

I hereby certify that I am an employee of the law firm RANDALL S. HILLER, P.A., counsel for the above captioned Defendant, and I have, this date written below served the within Plaintiff with Defendant's Motion to Reconsider relative to the above captioned by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

The Hon. D. Garrison Hill
305 E. North St.
Greenville, SC 29601

Ronald Bruce, Esq.
P.O. Box 450
Greer, SC 29652


Alison H. Kelley

November 13, 2012

Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Transportation Services, Inc.)

Plaintiff,)

vs.)

Joseph T. Bishop)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-23-6400

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 JAN 25 A 8:58

Plaintiff's Attorney:
Ronald Bruce, Bar No. _____
Address: _____

Phone: _____ Fax: _____
E-mail: _____ Other: _____

Defendant's Attorney:
Randall S. Hiller, Bar No. 2513
Address: _____
850 Wade Hampton Blvd, Greenville SC
Phone: 232-0026 Fax 242-4692
E-mail: rsh@rshpa.org Other: ahk@rshpa.org

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Reconsider
Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

S/Randall Hiller
Signature of Attorney for ☐ Plaintiff/ ☒ Defendant

January 23, 2013
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$ _____
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

- Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Transportation Services, Inc.,)
Plaintiff)

v.)
Joseph T. Bishop,)
Defendant)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2011-CP-23-6400

MOTION TO RECONSIDER

2013 JAN 25 A 8:58

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

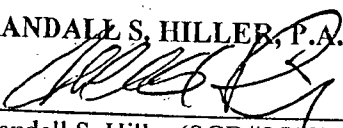
TO: RONALD G. BRUCE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas, Thirteenth Judicial Circuit, Greenville County Courthouse, Greenville, South Carolina, within Ten (10) days of the date of this Motion, or as soon thereafter as directed by this Honorable Court, for an Order altering and amending the Order of this Honorable Court, dated January 2, 2013, and filed for record on January 15, 2013, as follows:

1. That the Court modify the Order by deleting any finding of fact or rulings on the scope and extent of the easement.

This Motion is made pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure, as well as all other applicable law.

RANDALL S. HILLER, P.A.


Randall S. Hiller (SCB#2513)

850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
864-242-4692 Fax
Attorney for Defendant

Greenville, South Carolina
January 23, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Transportation Services, Inc.,)
Plaintiff)

v.)

Joseph T. Bishop,)
Defendant)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2011-CP-23-6400

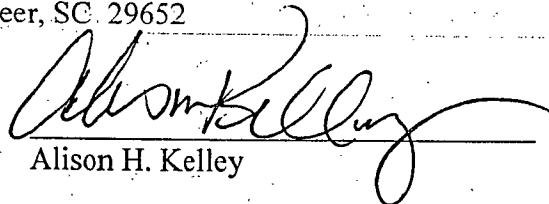
CERTIFICATE OF MAILING

2013 JAN 25 A 8:58

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

I hereby certify that I am an employee of the law firm RANDALL S. HILLER, P.A., counsel for the above captioned Defendant, and I have, this date written below served the within Plaintiff with Defendant's Motion to Reconsider relative to the above captioned by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Ronald Bruce, Esq.
P.O. Box 450
Greer, SC 29652


Alison H. Kelley

January 23, 2013

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2011-CP-23-06400

TRANSPORTATION ASSOCIATES,
INC.,

PLAINTIFF,

vs.

JOSEPH T. BISHOP,

DEFENDANT.

TRANSCRIPT OF RECORD

ORIGINAL

October 24, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

RONALD G. BRUCE, ESQ.
Attorney for the Plaintiff

JOSEPH T. BISHOP
Pro Se

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
 (DW) - Denotes Defense Witness

Page No.

(PW) PHILLIP DURHAM:

Direct Examination by Mr. Bruce.....7
 Cross-Examination by Mr. Bishop.....10
 Redirect Examination by Mr. Bruce.....13

(DW) JOSEPH T. BISHOP:

Cross-Examination by Mr. Bruce.....16

(DW) PHILLIP DURHAM:

Direct Examination by Mr. Bishop.....21

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Plaintiff's Exhibits)		
P-1	Photograph.....	6.....	6

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1
2 THE COURT: This is 2011-CP-23-6400, Transportation
3 Associates v. Bishop. And it's an order for a rule to
4 show cause hearing on removing an obstacle from a right of
5 way.

6 And, Mr. Bruce, whenever you're ready.

7 MR. BRUCE: Thank you, Your Honor.

8 Your Honor, I represent Transportation Associates,
9 Inc. Attached to the pleadings is a copy of the deed in
10 which my client purchased this property from the
11 Defendant, as a matter of fact. And together with that
12 deed, as Your Honor can see, there was a right of way that
13 was conveyed in addition to the property, which my client
14 utilized as -- for their trucking business. They are in
15 the trucking business. It's commercial transfer trucks.
16 They used that right of way.

17 And Mr. Bishop had put -- placed two concrete blocks,
18 which I have a photograph of here that we can introduce.
19 And we have attempted to work with Mr. Bishop in removing
20 those obstacles so we can cut down -- we've had several
21 wrecks there as a result of the obstacles. And we just
22 need some relief there.

23 And Mr. Bishop, who is here today representing
24 himself pro se, has not done so. I'm prepared to -- I
25 have Mr. Phillip Durham, who is a principle with

1 Transportation Associates, here, Your Honor, if you would
2 like to have some testimony. I know this is a rule to
3 show cause hearing. And -- but he's here, if you would
4 like to hear from him.

5 THE COURT: Where is the right of way on here? It
6 just says, Subject to --

7 MR. BRUCE: Yes. Let me show you, Your Honor.

8 THE COURT: Okay.

9 MR. BRUCE: And I did not attach that. I have a
10 survey that is referred to in the legal description.

11 (Pause.)

12 THE COURT: Okay. I see it.

13 Let me just ask, Mr. Bishop --

14 MS. PARR: Mr. Bishop is hard of hearing.

15 THE COURT: Okay. Sir, if you can't hear anything
16 that I say --

17 MR. JOSEPH BISHOP: Sir, I can hear you right now,
18 yes, sir.

19 THE COURT: But if you can't, at any point, or if I'm
20 just not making sense, just raise your hand and let me
21 know. And I'll stop and try to -- because I want to make
22 sure you hear everything.

23 MR. JOSEPH BISHOP: Thank you.

24 THE COURT: This is a hearing for their request to
25 have you remove these concrete blocks.

1 And do you have any objection to this photograph
2 coming into the record, sir?

3 MR. JOSEPH BISHOP: Sir, may I move closer?

4 THE COURT: Yes, sure. Come on up.

5 MR. JOSEPH BISHOP: Now, your question was what, sir?

6 THE COURT: Do you have any objection to that
7 photograph being placed into the record?

8 MR. JOSEPH BISHOP: No, sir.

9 THE COURT: Okay. We'll make that Plaintiff's
10 Exhibit No. 1, if that suits Ms. Jenkins.

11 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
12 identification and admitted into evidence.)

13 THE COURT: Their request is to have you remove those
14 concrete blocks.

15 Is that what I'm understanding?

16 MR. BRUCE: Yes, sir. That's it. That's all we're
17 asking for purposes of this hearing today.

18 MR. JOSEPH BISHOP: Sir, I -- are you asking me to
19 move them?

20 THE COURT: I'm going to ask -- he's going to have a
21 witness testify about it. And then you can ask the
22 witness questions. And then you can come up and be sworn
23 in and provide testimony and any evidence you want to.

24 MR. JOSEPH BISHOP: Yes, sir.

25 Thank you.

1 THE COURT: Okay.

2 MR. BRUCE: All right. Your Honor, would you like to
3 hear from Mr. Durham?

4 THE COURT: Yes, sir.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand, please.

7 WHEREUPON,

8 PHILLIP DURHAM,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 Have a seat here, please.

12 And speak up for the Court.

13 DIRECT EXAMINATION

14 BY MR. BRUCE:

15 Q Mr. Durham, state your name, and where you live.

16 A Phil Durham, 210 Bomar Road, Greer, South Carolina.

17 Q And are you a principle in the corporation called
18 Transportation Associates, Inc.?

19 A Yes, sir.

20 Q Which is the Petitioner in this matter?

21 A That's correct.

22 Q And we're here regarding a right of way that you
23 received -- that you purchased from Mr. Bishop in 1992
24 when you purchased this property. This is -- I'll show
25 you a copy of the deed, which has been entered into -- or

1 it's a part of the pleadings. And I'll ask you to
2 identify that. Is that the deed that you received?

3 A Yes, sir.

4 Q And what is shaded in yellow on this after the
5 conveyance of the real property itself in the legal
6 description, it calls for a right of way providing access
7 to South Carolina Highway 14 suitable for the use of
8 commercial vehicles of all types with rubber tires only
9 over the roadway shown on said plat as Caitlin Way, which
10 we have entered into evidence. And Judge Hill has a copy
11 of that plat. This was from '92. Have you utilized that
12 right of way from '92 to the present time?

13 A Consistently.

14 Q Is that your only access off Highway 14?

15 A It is.

16 Q Can you briefly describe the type of vehicles that
17 utilize that right of way?

18 A Tractor trailers with a length of 80 feet. And we're
19 having to turn in there -- at the present time, it's a
20 safety issue due to when we come in, we're having to come
21 to a complete stop and make sure it's clear in the next
22 left lane, and swing out and come into there. We've had
23 two cars rear-end our trailers coming in and out of there.

24 Q Now, you purchased the property in '92. When did
25 Mr. Bishop erect these concrete blocks, which we have

1 shown here on this photograph, which has been identified
2 by Mr. Bishop and us and is our Plaintiff's Exhibit No. 1?

3 A I'm not sure how long they've been there. They
4 weren't originally there. They've been there -- I know
5 Brent, my business partner, the other 50 percent of
6 Transportation Associates has had this conversation with
7 him trying to get him to remove them, you know. We leased
8 the property from him for over a year or two prior to us
9 buying it, which the concrete barriers was there as well.
10 We purchased the property. And it went -- for years, we
11 was utilizing the space where the concrete barriers are.
12 And then he just suddenly --

13 Q So the concrete barriers were not there in 1992 --

14 A No, sir.

15 Q -- when you purchased the property?

16 A No, sir.

17 Q And you have -- you and your partner have asked
18 Mr. Bishop over the year -- or however long it is, you
19 have asked him to remove them?

20 A Once we saw it was being a safety issue for our
21 driver's to get in and motorists out onto 14.

22 Q And what was Mr. Bishop's response?

23 A He was not moving them.

24 Q All right. You then are asking this Court to require
25 Mr. Bishop to remove the obstacles from the right of way

1 that you were conveyed by Mr. Bishop in 1992?

2 A Yes, sir.

3 Q Simple as that; is that correct?

4 A Yeah.

5 MR. BRUCE: I have no further questions. Answer any
6 questions that Mr. Bishop may have, or Judge Hill.

7 THE COURT: Okay. Mr. Bishop, you can question
8 Mr. Durham at this time, if you wish to.

9 MS. PARR: Can I ask the questions for him?

10 THE COURT: No, ma'am.

11 He would have to do it, unless you --

12 MS. PARR: Just ask him about the times that they
13 swung out and hit the cars.

14 MR. BRUCE: Your Honor, as I understand it,
15 Ms. Parr [phonetic] is a long-time secretary and whatnot
16 for Mr. Bishop. I would not object to her asking any
17 questions, unless the Court...

18 THE COURT: Well, I think he better ask them.

19 MR. BRUCE: All right.

20 MS. PARR: Thank you.

21 CROSS-EXAMINATION

22 BY MR. BISHOP:

23 Q Mr. Durham, do you still have the same right of way
24 you have -- now that you had in 1991 when you bought the
25 property?

1 A From a DOT standpoint, I do. But on your property, I
2 don't.

3 Q How many times have I told you and your partner about
4 the cars that you have hit in my parking lot right there
5 beside the building and the barrier is there to protect my
6 property and my tenants who park there beside the
7 building? And have I ever told you or your partner about
8 this?

9 A I don't know about my partner. You haven't never
10 said nothing to me about it.

11 Q Your partner is not here, so he can't answer.

12 A Yes, sir.

13 Q But I have talked to him several times about it.
14 They have hit four cars beside my building. And that's
15 the reason these blocks are there to protect my property
16 from your trucks coming in. You still have the same right
17 of way now, according to the 24-foot right of way, that
18 you had when you bought the property; right, or no?

19 A We was using more when we bought the property and
20 prior to using the property when we was leasing it.

21 Q You didn't answer my question, sir. Did you still
22 have the same right of way, a 24-foot right of way, that
23 you had the day you rented the property or bought the
24 property?

25 A From a DOT standpoint at the road, I do, but on your

1 property, I don't.

2 Q Okay. So you want to use my property and not the
3 right of way from the state DOT?

4 A You've got to have a right of way to get on your
5 property.

6 Q You have got a 24-foot right of way, the same thing
7 you had when you bought -- rented the property and bought
8 the property; right? Yes or no?

9 A From a DOT standpoint, yes.

10 Q You still have the same right of way?

11 A DOT.

12 MR. JOSEPH BISHOP: Thank you.

13 MS. PARR: Your Honor, we have some photos that we
14 have taken, if you would allow me to bring those, that
15 show the right of way. And they show -- they're larger
16 photos.

17 THE COURT: If you would just let Mr. Bruce review
18 them and see if he has got any problem with them. And
19 then we'll...

20 MR. BRUCE: Your Honor, these seem to be the same
21 photographs that I marked and had entered as an exhibit,
22 except for one.

23 THE COURT: You can put them into evidence, but bear
24 in mind we have to keep them if you do that.

25 MS. PARR: Yeah.

1 THE COURT: And this has got the answer and petition.
2 Do you have any objection?

3 MR. BRUCE: Your Honor, Ms. Parr showed -- gave me
4 that this morning. And I suggested she clock that in at
5 the Clerk's Office.

6 THE COURT: Mr. Lopez can clock it in for them.

7 All right. Thank you.

8 MR. BRUCE: Your Honor, I have two --

9 THE COURT: Sure. Go ahead.

10 MR. BRUCE: -- questions on redirect, if I could.

11 REDIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q I want to make this clear, Mr. Durham, that when you
14 purchased the property in 1992, and purchased that right
15 of way, which is referred to in the deed, that those
16 concrete blocks were not there?

17 A They were not there.

18 MR. BRUCE: No further questions, Your Honor.

19 THE COURT: Do you have anything else, Mr. Bruce?

20 MR. BRUCE: I do not, Your Honor.

21 THE COURT: Thank you, Mr. Durham.

22 Do you need to ask him some more questions?

23 MR. JOSEPH BISHOP: I'd just like to make a
24 statement, sir.

25 THE COURT: Okay. Then you're excused.

1 Let me say this, sir. If you want your statement to
2 be part of the record, you'll just have to be sworn in and
3 come take the stand.

4 MR. JOSEPH BISHOP: That would be all right.

5 THE COURT: And then you can make -- after you
6 testify and they've had a chance to question you, then you
7 can make whatever statement you want to make as far as an
8 argument.

9 MR. JOSEPH BISHOP: But it's just a statement
10 concerning the block.

11 THE COURT: Well, I think you better be sworn in.

12 MR. JOSEPH BISHOP: Okay. Yes, sir.

13 THE CLERK: Sir, put your left hand on the Bible and
14 raise your right hand, please.

15 WHEREUPON,

16 JOSEPH T. BISHOP,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you, sir.

19 THE COURT: Go ahead, sir.

20 MR. JOSEPH BISHOP: All right. (The blocks were put
21 there approximately a year ago. They were put there to
22 protect my property, because four trucks had run into four
23 cars. Two of the truck drivers got out and went inside
24 and said, I have hit somebody's car. I would like to
25 straighten it up with them. Two of the drivers drove off

1 and left two cars damaged with no payment on them. And
2 that's the reason the blocks were put there is to protect
3 my property. There's a parking lot there.

4 The building had just been rented. They're going to
5 have a lot of traffic. And they're going to need that for
6 parking continuously. I had plenty of parking up-front
7 until the highway was widened. I got a grandfather clause
8 on the parking, because the highway took part of my front
9 parking.

10 And the blocks are there simply just -- not for
11 spite. They've got plenty of room on the other side. In
12 fact, the map -- if you have a copy of it, there was a
13 copy made on the yellow page there showing the right of
14 way, showing what -- how much room they've got on the
15 other side that they're not using. It's no problem.

16 But to protect my parking on my property on my
17 building, that's the reason the blocks are there after
18 four vehicles were hit and damaged. There's plenty of
19 room up the road to go make a flip flop turn around and
20 come back and come in the left lane on the other side of
21 the road and have plenty of room to come in and stay on
22 the 24-foot right of way.

23 THE COURT: Okay. Thank you, sir.

24 MR. JOSEPH BISHOP: Thank you.

25 THE COURT: I'm going to let you have this. It's in

1 evidence, but you just hang on to it.

2 Go ahead, Mr. Bruce.

3 MR. BRUCE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BRUCE:

6 Q Mr. Bishop, I show you what has already been entered
7 into evidence and, as a matter of fact, was made a part of
8 our pleadings, a copy of a deed dated the 31st of August,
9 1992, and filed in the Register of Deeds Office for
10 Greenville County on October the 2nd 1992, where it looks
11 like you, Joseph T. Bishop, conveyed to Transportation
12 Associates, Inc., the Petitioner in this matter, for
13 \$419,290 certain legally described real estate, together
14 with a right of way providing access to South Carolina
15 Highway 14 suitable to the use of commercial vehicles of
16 all types. I ask you, is that your signature?

17 A Yes, sir, it is.

18 Q And do you recognize that document?

19 A Yes, sir.

20 Q All right. And you say you erected this concrete
21 obstacle one year ago today?

22 A Approximately a year ago.

23 Q Okay.

24 A I didn't say one year ago, but approximately a year
25 ago.

1 Q But you -- I would like to think that you understand
2 that you conveyed a right of way for purposes of
3 Transportation Associates vehicles, trucks,
4 tractor-trailer trucks coming and going. And this went on
5 from 1992 up until -- what was that you said -- last year,
6 that's 2010.

7 A What reply are you looking for?

8 Q No. I'm just asking you to acknowledge if that's
9 correct.

10 A That is correct.

11 Q Thank you.

12 A With the understanding to stay in the road, not on my
13 property, in the street.

14 MR. BRUCE: I have no further questions, Your Honor.

15 THE COURT: Go ahead. You can explain your answer,
16 and you can say anything else you want to at this time,
17 sir.

18 MR. JOSEPH BISHOP: That was the original agreement,
19 that they stay in the road. They've got a 24-foot right
20 of way plus. And that's all I asked them to do was stay
21 in the road. When they get out from the street, then
22 they're on my property for my parking for my personal
23 realty -- real estate.

24 THE COURT: Your position is that the blocks are not
25 in the right of way?

1 MR. JOSEPH BISHOP: No, sir. They're not in the
2 right of way.

3 THE COURT: Is that disputed?

4 MR. BRUCE: Yes, sir, Your Honor, it is.

5 MR. JOSEPH BISHOP: The picture shows it plainly.
6 They're not in the right of way. They're sitting 15, 18
7 inches off the road.

8 THE COURT: All right. Do you have any further
9 questions?

10 MR. BRUCE: I have no further questions, Your Honor.

11 THE COURT: Are you saying, sir, that the right of
12 way over Caitlin Way has a certain width?

13 MR. JOSEPH BISHOP: 24 foot, yes, sir.

14 THE COURT: Where do you get that from?

15 MR. JOSEPH BISHOP: From the side of the asphalt to
16 the other side of the asphalt. It's on the yellow sheet
17 there. I've got a map on it.

18 THE COURT: I think you've got it.

19 MR. JOSEPH BISHOP: I believe I gave you all of it.

20 THE COURT: Oh, you gave it back to me?

21 Oh, you did.

22 MR. JOSEPH BISHOP: On the yellow sheet there
23 showing -- I've got a map showing the distance.

24 THE COURT: Has that driveway been repaved since
25 1992?

1 MR. JOSEPH BISHOP: Yes, sir.

2 They came to me. Phil's partner, Brent Jones, came
3 to me at one time and said --

4 MR. BRUCE: Your Honor, I would object --

5 MR. JOSEPH BISHOP: -- the DOT --

6 THE COURT: Okay. Hold on. He's objecting.

7 That would be hearsay, sir.

8 MR. JOSEPH BISHOP: All right, sir.

9 THE COURT: Okay. Thank you, Mr. Bishop.

10 MR. JOSEPH BISHOP: Thank you.

11 THE COURT: So what would be your position,
12 Mr. Bruce, as to what evidence there is that the right of
13 way extends beyond the asphalt?

14 MR. BRUCE: Your Honor, our position is that we
15 enjoyed that -- the full use of the right of way as per
16 the intent of the -- from the evidence of that deed for 18
17 years before this concrete obstacle showed up, as
18 Mr. Bishop testified to, in 2010.

19 THE COURT: So you're saying that the right of way is
20 broad enough to include that area that the concrete blocks
21 are currently within, because the right of way is for
22 "providing access to Highway 14 suitable for the use of
23 commercial vehicles of all types"?

24 MR. BRUCE: That's correct, Your Honor.

25 THE COURT: "Over the roadway shown on said plat."

1 How is that on the roadway, though?

2 MR. BRUCE: One minute, Your Honor.

3 (Pause.)

4 MR. BRUCE: Your Honor, I go back to the right of way
5 as it is set out in the deed. And it calls for the --
6 enough right of way there to allow us to get our trucks
7 in.

8 Now, Mr. Bishop knew what type of business we were
9 in. And we paid \$419,000 for the property and that right
10 of way in 1992. And we utilized that right of way without
11 any problem for 18 years before the appearance of these
12 concrete blocks.

13 THE COURT: Thank you.

14 MR. JOSEPH BISHOP: Your Honor --

15 THE COURT: Yes, sir, Mr. Bishop.

16 MR. JOSEPH BISHOP: Could we call Mr. Durham back to
17 the stand, please?

18 THE COURT: Mr. Bruce, do you have any objection to
19 that?

20 MR. BRUCE: I have no objection at all.

21 THE COURT: Sure. Okay.

22 (WHEREUPON, Mr. Phillip Durham came forward.)

23 MR. PHILLIP DURHAM: Do I need to be re-sworn?

24 THE CLERK: No, sir.

25 THE COURT: No, sir. You're already under oath, sir.

1 Go ahead.

2 DIRECT EXAMINATION

3 BY MR. JOSEPH BISHOP:

4 Q Mr. Durham, you made the statement a while ago that
5 you had no other access to that property, no other way to
6 get in and out. Did -- when you bought the property, did
7 I not tell you then or an hour later that you had a right
8 of way on the backside of that property coming in on --
9 I'm trying to think of the name of the street -- the
10 street behind you? Did I not tell you that? Is it not in
11 your deed? Is it not in a map showing where you bought
12 the property this road coming in on the backside of the
13 property?

14 A I don't think it's usable or suitable for --

15 Q It was until --

16 THE COURT: Hold on. Hold on. Don't cut him off.
17 She's got to be able to take everything down, so y'all
18 don't talk over each other.

19 MR. JOSEPH BISHOP: I'm sorry.

20 THE COURT: Go ahead.

21 THE WITNESS: It's not really suitable for commercial
22 vehicles. And what we're talking about today is off the
23 main 14 that we was granted from you. It's suitable for
24 commercial vehicles. The road back here on that road
25 you're talking about is probably not --

1 BY MR. JOSEPH BISHOP:

2 Q You made the statement that you had no other right of
3 way.

4 A Not usable right of way.

5 Q It could be made usable without any problem if you
6 hadn't grated it down. You grated it down. And it could
7 be grated and used as a right of way, which you said you
8 did not have; is that right?

9 A There again, when I said no right of way, it's a
10 usable right of way.. There's probably --

11 Q You didn't -- excuse me. You didn't say usable. You
12 said you had no other right of way to it. And I pointed
13 that out to you when I sold you the property and made it
14 clear that you had a right of way coming in on the
15 backside if you ever wanted to use it, did I or did I not?

16 A I'm sure you did.

17 MR. JOSEPH BISHOP: Thank you.

18 That's all.

19 THE COURT: Mr. Bruce, do you have any questions?

20 MR. BRUCE: I have no further questions.

21 THE COURT: Okay. Thank you, sir.

22 Any further witnesses?

23 MR. BRUCE: No, sir.

24 THE COURT: All right. I understand this thing was
25 just filed this month -- earlier this month. And, as you

1 probably all know, we have -- well, it was filed on
2 September 27th, the petition. We do have mandatory
3 mediation. And I understand this is not subject to it,
4 perhaps, but -- and I'm happy to make a decision on it.
5 But the decision I make is very -- can only do certain
6 things. It's very limited. I can either say yes or no.
7 And somebody is going to lose and walk away unhappy. And
8 that's just what happens.

9 If you try to mediate the case, you could come up
10 with all kinds of creative solutions to this dispute. And
11 y'all are both businessmen. And it would seem to me that
12 y'all ought to spend sometime pursuing that. I'm sure,
13 through Mr. Bruce's good counsel, that's already been
14 talked about. But I don't want to miss an opportunity to
15 get y'all together in the hopes that you can work it out
16 in some way that you both can live with each other since
17 you've got to be neighbors from here on out.

18 And what I would ask you to do is find a mediator,
19 somebody who's qualified to sit down with y'all and try to
20 work it out, so both sides can come away with something
21 they can both live with. And if you can't do that, I
22 understand. But I think you ought to, at least, explore
23 it in good faith before you leave it up to some judge, who
24 doesn't know anything about it or know anything about you
25 to decide it.

1 Because as a famous philosopher said one time, he had
2 almost been ruined -- I would just say a famous
3 philosopher said once that he had almost been ruined twice
4 in his life, once when he lost a lawsuit and once when he
5 won one.

6 Yes, sir, Mr. Bruce.

7 MR. BRUCE: I've had clients tell me that, Your
8 Honor.

9 Your Honor, I -- if we can, just leave it where it is
10 here.

11 THE COURT: Yes.

12 MR. BRUCE: And I will get back with your office. I
13 think that between the -- I think we can work out
14 something here.

15 THE COURT: Well, and if y'all want me to appoint
16 somebody to mediate it, I will. And I'll be happy to
17 assist in any way I can. I'm not trying to pressure
18 anybody.

19 MR. BRUCE: I understand.

20 THE COURT: But y'all both seem like reasonable
21 people, both sides. And I understand disputes crop up
22 from time to time, particularly when you talk about land,
23 things get to be very passionate and emotional. But it
24 seems to me that there's a lot of room to work on both
25 sides here without some judge making a ruling that's going

1 to make everybody miserable for the next 40 years.

2 All right. Thank you.

3 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

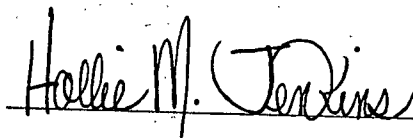
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 24th day of October, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 3, 2013



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2011-CP-23-06400

TRANSPORTATION ASSOCIATES,
INC.,)

PLAINTIFF,)

vs.)

JOSEPH T. BISHOP,
DEFENDANT.)

TRANSCRIPT OF RECORD

ORIGINAL

August 29, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

RONALD G. BRUCE, ESQ.
Attorney for the Plaintiff

RANDALL S. HILLER, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: The next case is 2011-CP-23-6400,
Transportation Associates, Inc. v. Joseph T. Bishop.

And, Mr. Bruce, good morning.

MR. BRUCE: Good morning, Judge.

How are you?

THE COURT: Actually, I think it's afternoon now.
Sorry.

MR. BRUCE: It's -- yeah, five minutes after.

Thank you.

I don't think we're going to be as long, Your Honor.

THE COURT: Okay. Well, is Mr. Bishop here?

MR. BRUCE: Mr. Bishop is now represented by
Mr. Hiller, who just walked out the door.

THE COURT: Okay. He's coming back, I guess.

MR. BRUCE: I would hope so, maybe not.

(Pause.)

(WHEREUPON, Mr. Randy Hiller entered the courtroom.)

THE COURT: Okay. This is a motion for what now? I
can't remember. It's a rule to show cause.

MR. BRUCE: Your Honor, this is a motion -- we're
back again.

THE COURT: Yes.

MR. BRUCE: I don't expect you to remember us from --

THE COURT: I do. I remember it was about a

1 driveway.

2 MR. BRUCE: That's correct.

3 I represent Transportation Associates, Inc., which is
4 the owner of a certain tract of real estate in Greer off
5 of Highway 14. My clients are in the trucking business.
6 Their business is Service Transport, Incorporated, a very
7 prominent figure in the trucking business in the upstate
8 here in Greer. It's Mr. Brent Jones and Mr. Durham, who
9 testified and his testimony is already on record before
10 Your Honor.

11 THE COURT: Right.

12 MR. BRUCE: Mr. Young is here to answer any questions
13 you might have.

14 We attempted to settle the matter subsequent to the
15 testimony being taken here in October. For various
16 reasons, that settlement was not able to work. And we
17 asked the Court to make a decision based upon the evidence
18 before it. You required mediation. The case was mediated
19 in February. Brown Parkinson was the attorney who
20 mediated.

21 Subsequent to that, Mr. Hiller joined the fray and
22 was a part of the mediation that took place at my office
23 in February. We came away from that thinking that an
24 agreement had been struck. It had not. We, subsequently,
25 scheduled two more non-jury matters before this Court.

1 And in both cases -- well, in, at least -- yeah, in two
2 cases, I know my client called and said, I think we've got
3 something worked out. We'll get back. But it continued
4 to be frustrated.

5 So we're here to, basically, ask the Court to make a
6 decision. We've got a situation that's very simple. You
7 have the deed and you have the right of way language in
8 that deed before you. You have a copy of a survey of
9 Caitlin Way.

10 Our trucks -- my clients trucks have not been able
11 to -- in a safe and positive manner been able to navigate
12 its way through that property. There have been, at least,
13 four wrecks as a result of some of the issues, the wide
14 turn the trucks have to make as a result of the rocks.

15 We've owned that property since 1992. And I believe,
16 if my memory serves me, Mr. Durham, in his testimony,
17 indicated that there had been no problem with those trucks
18 for 10 years, until the Defendant in this case erected
19 these rocks, these concrete blocks.

20 And we are asking this Court to allow us to enjoy the
21 right of way that we purchased as a part of the property
22 from the Defendant. And we feel that we're entitled to a
23 reasonable right of way. We've attempted to work it out
24 with the Defendant -- with the Respondent, and to no
25 avail. And we're asking for the relief -- the Court to

1 grant us the relief we've asked for in our petition, which
2 is mainly to remove those obstacles.

3 THE COURT: Thank you, Mr. Bruce.

4 Yes, sir, Mr. Hiller.

5 MR. HILLER: Your Honor, I'm Randy Hiller. I
6 represent Mr. Bishop.

7 I'll report to the Court that Mr. Bishop is on his
8 way. He's an elderly gentleman. I spoke to him just last
9 week, and reminded him of the hearing. But during the --
10 while I was sitting here quietly in the earlier hearing,
11 when I didn't see him out here, I contacted my office,
12 they contacted him. And he's on his way.

13 Your Honor, it's -- of course, I wasn't present
14 during the initial hearing when Mr. Bishop represented
15 himself. But I understand that the evidence that was
16 presented and the evidence before the Court is the deed
17 that was, actually, recorded at the ROD office that
18 references the right of way that's shown on the plat,
19 which was, also, presented in evidence, which is recorded
20 at the ROD office in Plat Book 23-0 at Page 6. It shows a
21 specific paved and specific width of the right of way.

22 The documents and the evidence that I have would
23 indicate -- and my client I presume testified earlier, but
24 can, certainly, testify when he gets here that the
25 rocks -- or the concrete blocks that are being complained

1 of by the movant in this particular situation are outside
2 of the right of way. They are not within the paved area
3 of the property -- the paved area of the driveway, nor are
4 they within the surveyed portion of the property as shown
5 on that plat in 23-0-6. They are at 1.30 inches beyond
6 the right of way, and 40 inches beyond the right of way.

7 And what -- it's our position that what the -- and
8 I'll just briefly address -- although I don't know whether
9 there's any factual information to support Mr. Bruce's
10 contention with regards -- and already in the record with
11 regards to accidents or no problem since 1992.

12 Since 1992, and, in fact, very much more in the
13 recent history than the recent past is the fact that this
14 particular portion of State Highway 14 was widened to
15 three lanes, or six lanes total, and that there was a
16 substantial take by the highway department. That didn't
17 effect the width of the right of way that was granted by
18 the deed. But it may or may not have effected their
19 ability to turn into it. But that's when the problems
20 arose where the vehicles were coming outside of the right
21 of way and, according to my client, hitting vehicles that
22 my client had parked there. Because he's a used car sales
23 man. That's the business he runs. And that's the only
24 place he had to park them once the highway department did
25 the take.

1 We don't -- I mean, Your Honor, we, clearly, agree
2 that they have a 24-foot right of way as shown on that
3 plat. We have not attempted in any way, shape, or form to
4 impede their ability to use that right of way. But the
5 right of way is the right of way. It doesn't include
6 whatever other part, portion, or property that they think
7 they may need.

8 As long as -- I mean, it would be my position that
9 under the real property law, if my client wanted to build
10 a fence six inches, or two inches, or one inch off of that
11 right of way all the way down the length of the right of
12 way, he would have the absolute right to do so.

13 (Brief interruption.)

14 MR. HILLER: Was that a question?

15 THE COURT: I don't know what that was. But I do
16 have a question.

17 MR. HILLER: Yes, sir.

18 THE COURT: Where are you getting the 24 feet from?

19 It's been a while since I've looked at the file.
20 I've got --

21 MR. HILLER: The deed does not specify it, Your
22 Honor. But the plat, the 23-0 -- do you have a copy
23 of the plat?

24 THE COURT: Yes.

25 Where on the plat is it?

1 MR. HILLER: Well, Your Honor, you're going to need a
2 magnifying glass and a scale. The recorded survey is
3 drawn to scale.

4 THE COURT: This is the survey of --

5 MR. HILLER: The survey for Service Transport, Inc.
6 And I'm going to need reading glasses just to read the
7 bigger portions of it while I'm standing here.

8 But, you know, from a real property standpoint, Your
9 Honor, under -- I believe it's Title 30, you know, that
10 governs recordation of plats and surveys. This recorded
11 plat becomes the reference that -- you're authorized to
12 reference a recorded plat and a deed or a survey -- I mean
13 a deed and then the description of the plat becomes the
14 description within the deed.

15 THE COURT: But where is the 24 feet on there?

16 MR. HILLER: Well, that's why I said you have to have
17 a scale.

18 THE COURT: Okay.

19 MR. HILLER: The plat is drawn to scale. The scale
20 is set forth in the legend on the bottom right-hand
21 corner, which I can't possibly read without a magnifying
22 glass here today.

23 THE COURT: Oh, okay. This ratio of precision?

24 MR. HILLER: No. There's, actually --

25 THE COURT: Oh, I see. Okay. The scale.

1 MR. HILLER: It's usually one inch to -- I can't read
2 it. I mean, I've read it. Because, you know, when you,
3 actually, pull this up on the ROD website --

4 THE COURT: Yes, sir.

5 MR. HILLER: -- you can blow it up, you know. You
6 can keep hitting the plus key.

7 But I, actually -- if you have it in the actual size,
8 if you go to the ROD office and look at the actual survey,
9 then you can put the scale on any dimension contained
10 within the survey, and arrive at the scale of dimensions.
11 And it, of course, shows it as an existing right of way.
12 And then -- I don't know --

13 THE COURT: Okay. Well --

14 MR. HILLER: Did Mr. Bishop put into evidence the
15 photographs at the prior hearing?

16 THE COURT: They're in the record.

17 MR. HILLER: Okay. Well, you can see even from the
18 photographs that none of this is on any paved surface.

19 THE COURT: Well, that -- I think that's -- I think
20 the --

21 MR. HILLER: The plat shows the surface as paved.

22 THE COURT: Well, that's what I was going to say.
23 I think --

24 MR. HILLER: As an existing paved right of way.

25 THE COURT: That was the conflict, that the plat

1 presumably showed the paved area that was in the
2 photographs that Mr. Bishop presented. And, clearly,
3 the -- well, although there's some paved area outside of
4 the -- and coextensive with where he's placed the bricks,
5 there's -- I don't know. But you can't call them bricks.
6 I don't know what you call them, cement blocks.

7 So the question is, the deed says reasonable access
8 for commercial vehicles -- and I'm paraphrasing, of
9 course -- but the plat shows a --

10 MR. HILLER: Specific width.

11 THE COURT: -- specific width. And there's some
12 confusion on whether that width is -- and maybe there was
13 testimony at the previous hearing about has it been
14 repaved, or has the paved area been expanded. But it
15 looks to me like in the photographs that there's a paved
16 area irregular in shape that exceeds this black line that
17 Mr. Bishop drew down the driveway.

18 MR. HILLER: Well, there's, actually -- if I could,
19 Your Honor, I'll hand up a photograph.

20 THE COURT: It's going to be necessary to go back and
21 look at the testimony. Because I believe, at some
22 point -- and the record will speak for itself, of course.
23 But I believe, at some point, Mr. Bishop testified about
24 the width. And that may be where the 24 feet came from.
25 I know he put it on the picture. But I seem to recall

1 some testimony about that. But my memory is not perfect.

2 Do you remember, Mr. Bruce?

3 MR. BRUCE: No, I do not, Your Honor.

4 MR. HILLER: There's no way I'm going to remember
5 since I wasn't here.

6 But -- well, Your Honor, obviously, Mr. Bruce and I
7 have attempted to arrive at a solution where there would
8 be some additional property acquired by them so that they
9 could make the width of the entrance. Because there's
10 never been any question, there's plenty of room for the
11 trucks when they're driving back and forth. It's just
12 turning in that appears to be a problem that causes them
13 to swing way out of -- from my clients perspective,
14 outside the scope of the thing and put his property at
15 risk. And there was talk about it.

16 And, frankly, from Mr. Bruce's and my standpoint, we
17 think it would behoove them both from an economic and
18 otherwise standpoint to, actually, spend their money there
19 than with us. But we're prepared to let the Court rule if
20 that's where we've got to be.

21 And, obviously, it would have been nice if the deed
22 had referenced only the one thing, or only the other, but
23 it does not. And I mentioned to Mr. Bruce the other day,
24 I said, you know, until the Judge rules it's ambiguous,
25 you really shouldn't provide any testimony. But I think

1 we both agree that this is ambiguous. And so we concede
2 that point with regards to the deed.

3 But they both have an interest. I mean, and it's
4 equally compelling. I mean, you know, if the trucks are,
5 indeed, exceeding the way of the right of way, I mean, is
6 there a limit to that, or is it just open-ended? Can they
7 drive 10 feet out, or five feet out, or three feet out, or
8 two feet out? Because that diminishes the value and the
9 use of the remainder of the property that, clearly, wasn't
10 intended, in my opinion, under the deed.

11 THE COURT: Well, that's why I thought that it was a
12 prime candidate for mediation, because there was, number
13 one, some apparent ambiguity. And, number two, there's
14 only so much the Court can do in a ruling to provide
15 relief.

16 But I appreciate y'all's efforts to -- and I'm
17 certain with Mr. Hiller and Mr. Bruce and their efforts
18 that every avenue has been exhausted. And I know y'all
19 have formally gone to mediation. And I thank you for your
20 efforts. And I'm delighted to rule on it, based on the
21 record as it now stands, or if you want to submit further
22 evidence, I'll be glad to do that, too.

23 MR. HILLER: Well, I probably need to present some
24 evidence with regards to the issue of the paving. So
25 unless Mr. Bruce -- it's his motion. So if he wants to

1 present, I'll follow, or, otherwise, I'll present.

2 THE COURT: Well, let me ask you this. And y'all are
3 both experienced lawyers. And I don't want to get caught
4 up in some kind of a procedural deal, because everybody
5 just wants relief I know at this point.

6 Do y'all agree that I could decide the scope of the
7 easement?

8 MR. HILLER: No. I don't really agree with that.

9 I mean, I think, as I saw the filing, it was a rule
10 to show cause as to move the blocks. I don't think that's
11 a sufficient pleading to resolve any issue as to
12 title [phonetic]. I think whatever you rule today either
13 for my client or against my client, or for
14 Mr. Bruce's client or against his client, that there's
15 going to be a quiet title action that's going to have to
16 be brought, and, you know, to address the issue of the
17 actual full scope of the easement.

18 Because all they've asked is you move these rocks,
19 and, as I indicated, you can order that. But -- or blocks
20 or whatever. I'm calling them rocks. But you can't leave
21 it -- I mean, it can't be left open-ended. It has to be
22 resolved one way or the other. I mean, how far is it? I
23 mean, is it all the way to his building? I mean, his
24 building is only 10 or 12 feet from the road. I mean,
25 somewhere somebody has got to sit down and say, okay, this

1 is the scope of the easement, and it needs to be
2 clarified, and it needs to be -- it probably needs a --
3 you know, it's not a -- it needs pleadings, and it needs a
4 couple hour trial probably.

5 MR. BRUCE: Your Honor, I would agree with Mr. Hiller
6 with regard to the issues. We would love to -- and I have
7 attempted to explain it to my client, who in their mind
8 had come up with a perfectly reasonable solution to the
9 issue.

10 I instructed my client and Mr. Hiller and I had a
11 phone conference, an e-mail transmission to the fact that
12 we cannot -- that this is not an appropriate forum to
13 discuss settlement negotiations, and that we had simply
14 asked for the immediate relief of moving.

15 We know those concrete blocks have been the source of
16 our problem. We're sorry -- well, we're not sorry they
17 widened 14. But that's something that could be
18 anticipated any time that any land owner owns property on
19 a state-maintained highway, particularly something in the
20 nature of Highway 14. And that could have been
21 anticipated by the Respondents in 1992.

22 I don't know what we would gain by adding any more
23 testimony. If, in fact, we can't, ultimately, resolve it,
24 then there will be an action either by Mr. Hiller's
25 clients or my clients where they told me to do that with

1 regard to clarifying an agreed upon -- I don't want to use
2 the word ambiguous, but it's, certainly, a very -- yeah,
3 let's just say ambiguous language, and have that
4 clarified, so we won't be back here again with regard to
5 the width and breadth of that easement.

6 So I would suggest that the only thing it appears to
7 me from the direction the Court has indicated and the
8 letter that you sent back in January to me that moving the
9 concrete blocks is the best we can get at this juncture,
10 and with an anticipation of expanding on that in
11 another...

12 THE COURT: All right.

13 MR. HILLER: Your Honor, frankly, I just don't -- you
14 know, I don't even see how this is right for
15 determination, based on Mr. Bruce's -- I mean, there needs
16 to be some determination as to exactly what that right of
17 way that's contained in that deed is.

18 And, you know, if they move blocks that render he's
19 not entitled to use his property in any way, shape, or
20 form for some unknown distance for some unknown time, I
21 mean, you know -- the more appropriate thing would be to
22 do an action for quiet title as to the right of way, or
23 claim some easement by necessity, or whatever that needs
24 to be. I mean, assuming they're going to claim that so
25 that, you know, we could, clearly, define the rights of

1 the parties and there won't be any other issues, just
2 resolve them all at one time.

3 THE COURT: Well, that's what I was suggesting, but
4 you seemed to indicate that you had procedural objections
5 to that.

6 MR. HILLER: Well, I do. Because, you know, frankly,
7 I think it involves substantially more potential legal
8 issues both from a pleading standpoint and an affirmative
9 defense standpoint than were raised in any way, shape, or
10 form under this rule to show cause, you know. I mean, it
11 just says they want an order having him remove it out of
12 the right of way. Well, we have to define the right of
13 way before you can move the rocks out of the right of way.

14 And I don't believe it's, you know, in my opinion, a
15 simple legal issue to define that, especially since it has
16 an economic impact on both the easement area, the benefit
17 to them and the burden on my client of the easement area.

18 THE COURT: So, basically, your action is for
19 contempt, isn't it?

20 MR. HILLER: Well, I don't even think it's contempt.
21 Because his motion says --

22 THE COURT: Rule to show cause.

23 MR. HILLER: -- requiring Respondent to remove
24 obstacles to Petitioner's access and right of way.

25 MR. BRUCE: My clients want to enjoy the right of

1 way -- the same right of way that we've had for 10 years
2 since we purchased the property, Your Honor.

3 MR. HILLER: Your Honor, we would consent to not
4 having any impediments on any area or parallel to any --
5 or within any area parallel to any area that is paved.

6 MR. BRUCE: Your Honor, once again, to reiterate,
7 that right of way language includes a right of way
8 suitable for the use of commercial vehicles of all types.
9 Mr. Bishop knew what kind of business my clients were in
10 with rubber tires, obviously, over the roadway. It says
11 nothing about width, but over the roadway shown on said
12 plat as Caitlin Way suitable for the use of commercial
13 vehicles.

14 And we had no problem for 10-plus years until those
15 blocks were erected. And our position is very simply in
16 the petition that his actions have taken away from the
17 suitability of our right under the deed.

18 THE COURT: Well, I thought I heard him say he would
19 be willing to take them away.

20 MR. HILLER: Take them outside of any parallel lines
21 with the paving where there was, actually, paving. I
22 mean, you questioned on the photograph whether it
23 indented -- or the pavement kind of swerved out.

24 THE COURT: I see what you're saying.

25 MR. HILLER: But I don't see how anybody can argue

1 legitimately -- I mean, because, you know, they say
2 Mr. Bishop knew what kind of business they were in. Well,
3 they knew what kind of business they were in.
4 Transportation Associates, they knew what kind of trucks
5 they had and what kind of trucks they used.

6 There was a recorded plat at the courthouse that,
7 specifically, referenced and showed the width. And it
8 showed it was on the ground -- I mean the road was on the
9 ground when they bought the property. And the claim now
10 that they have some rights beyond that paved road is --
11 it's a taking. And it's incapable of being defined.
12 Whatever -- their position is whatever they decide is
13 necessary beyond that pavement that they have a right to.

14 And I just don't think that's an appropriate
15 interpretation under even this ambiguous language that
16 they can just say we need more to make it suitable.

17 So I believe the photograph that the Court was
18 referring to, you can see a portion of what appears to be
19 some pavement in the lower right-hand corner of the
20 closest to the second stone or rock. And what I'm saying
21 is that we will move it outside. If you drew a line
22 parallel to the pavement, any pavement out there, we'd
23 move anything outside of the pavement giving them all the
24 benefit of the doubt as to the width of the pavement.

25 THE COURT: Well, I mean, you know, I don't want

1 anybody to interpret my brooding over this as some
2 reluctance to issue a decision. I mean, that's what I do
3 every day.

4 But I, also, am mindful that even if I do issue a
5 decision in favor of one party or the other, what value is
6 it going to have? I mean, if I say move the bricks,
7 provide a reasonable access consistent with the deed, then
8 y'all are just going to be back up here next week saying
9 that the Plaintiff's have exceeded the reasonable access
10 because they went six inches further than they ever have
11 before.

12 MR. HILLER: That's why I think it needs to be a
13 quiet title.

14 THE COURT: Okay. I'm going to look it over.

15 And thank you for your arguments.

16 I'm sorry to take so long.

17 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

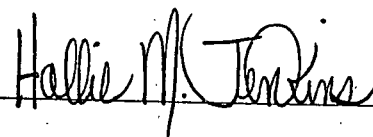
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th day of August, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 3, 2013



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-6400

Transportation Services, Inc.

Respondent,

v.

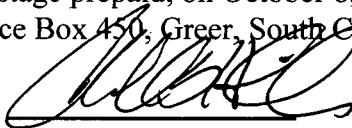
Joseph T. Bishop

Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Transportation Services, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on October 8, 2013, addressed to its attorney of record, Ronald G. Bruce, Post Office Box 450, Greer, South Carolina 29652.

October 8, 2013.


Randall S. Hiller
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THE STATE OF SOUTH CAROLINA
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Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal complies with Rule 211(b), SCACR.

September 18, 2013



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October 8, 2013

SC Court of Appeals
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Columbia, SC 29201

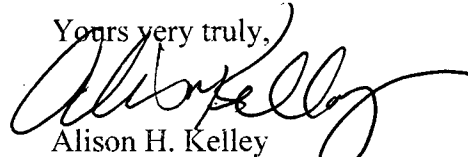
Re: *Transportation Services, Inc. (Respondent). v. Joseph T. Bishop (Appellant)*

Dear Madam Clerk:

Please find enclosed one unbound original and fourteen copies of the Record on Appeal and Proof of Service regarding the above. Please file the original proof of service and return the stamped copy to me in the envelope provided.

Also enclosed is a copy of a letter addressed to Mr. Bruce enclosing his bound copy of the Record with a copy of our proof of service.

Yours very truly,



Alison H. Kelley
Paralegal to Randall S. Hiller

/ak

Enclosures.

Cc: *Ronald G. Bruce, Esq.*

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