THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Heather Rousey Piper, Respondent,

v.

Kerry Grissinger, William P. Hardee, and Paul E. Lesondak, Defendants,

Of Whom Kerry Grissinger and Paul E. Lesondak are the Appellants.

Appellate Case No. 2016-001104

Appeal From Chester County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2019-UP-030
Submitted October 1, 2018 – Filed January 16, 2019

AFFIRMED

John Martin Foster, of Rock Hill, for Appellants.

Christopher Lee Boguski and Jessica Clancy Crowson, both of Rogers Lewis Jackson Mann & Quinn, LLC, of Columbia, for Respondent.

PER CURIAM: In this declaratory judgment action, the circuit court granted Heather Rousey Piper an easement for ingress and egress, determining "the means of access known as the 'Gandy Easement' is the most appropriate means of access to and from the Piper Parcel." Kerry Grissinger and Paul E. Lesondak appeal, arguing Piper does not meet the elements for (1) an easement implied by prior use, (2) a prescriptive easement, or (3) an easement by necessity. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) ("An issue is deemed abandoned if the argument in the brief is only conclusory."); *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule was abandoned), *aff'd as modified on other grounds*, 337 S.C. 622, 525 S.E.2d 246 (2000)); Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered [that] is not set forth in the statement of the issues on appeal."); *Dreher v. S.C. Dep't of Health & Envtl. Control*, 412 S.C. 244, 249-50, 772 S.E.2d 505, 508 (2015) ("'An unappealed ruling is the law of the case and requires affirmance.' Thus, should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case." (quoting *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013))); *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 76, 610 S.E.2d 482, 487 (2005) ("A ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling."); *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("An appellant may not use . . . the reply brief as a vehicle to argue issues not argued in the appellant's brief."); *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001) ("The appellants have the responsibility to identify errors on appeal, not the [c]ourt. . . . '[A]ppellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.'" (last alteration by court) (quoting *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991))); *In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) ("When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal."); *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Declaratory judgment actions are neither legal nor equitable[,] and[] therefore, the standard of review depends on the nature of the underlying issues."); *Lollis v. Dutton*, 421 S.C. 467, 478, 807 S.E.2d 723, 728 (Ct. App. 2017) ("To determine whether an action is legal or equitable, this [c]ourt must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and

character of the relief sought." (alteration by court) (quoting *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009))); *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) ("The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury." (quoting *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998))); *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. App. 1998) ("In a law case tried by the judge without a jury, this court reviews for errors of law and reviews factual findings only for evidence [that] reasonably supports the court's findings."); *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 567, 211 S.E.2d 876, 877 (1975) (holding the trial court's factual findings in a law action are equivalent to a jury's findings).

AFFIRMED.[1]

KONDUROS, MCDONALD, and HILL, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2016-001104

Heather Rousey Piper, Respondent,

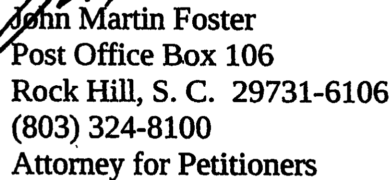
v.

Kerry Grissinger,
William P. Hardee, and
Paul E. Lesondak,
of whom:
Kerry Grissinger and
Paul E. Lesondak,
are the Appellants.

PETITION FOR REHEARING

This Petition is based upon those certain points, factual and legal, which the Appellant believe the Courts to have overlooked or misapprehended, as set out in the accompanying Memorandum, a copy of which is attached hereto and incorporated herein.

January 30, 2019



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

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of whom:
Kerry Grissinger and
Paul E. Lesondak,
are the Appellants.

CERTIFICATE OF SERVICE

I certify that on January 30, 2019, I served the Petition for Rehearing, its accompanying Memorandum and this Certificate of Service on the following counsel of record, parties or persons:

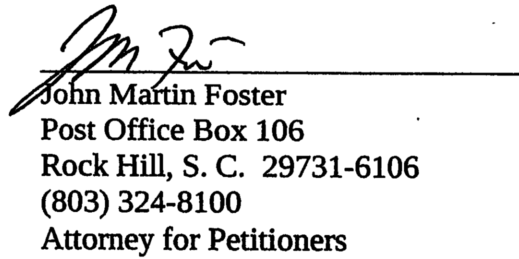
Jessica C. Crowson
Christopher L. Boguski
Rogers Lewis
Post Office Box 11803
Columbia, S. C. 29211
Attorneys for Respondent

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no

office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

January 30, 2019



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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Appellate Case No. 2016-001104

Heather Rousey Piper, Respondent,

v.

Kerry Grissinger,
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Paul E. Lesondak,

of whom:
Kerry Grissinger and
Paul E. Lesondak,
are the Appellants.

MEMORANDUM ON PETITION FOR REHEARING

The Petitioners petition for a rehearing of the matter above under Rule 221(a), S.C.A.C.R.

This Petition is based upon those certain points, factual and legal, which the Petitioner believes the Court to have overlooked or misapprehended, as set out herein.

THE DECISION ON APPEAL

This decision of this Court was filed January 16, 2019. To the extent allowed, the Petitioners restate and by this reference reargue all matter set out in their Brief and referenced in their Record on Appeal.

BACKGROUND

This action concerns the right to an easement over real property for the purpose of access. In 1951, the real property in question was divided by Taylor, and a common roadway was platted between real property retained by Taylor and that conveyed to Severance. A copy of the 1951 Plat showing the roadway, which lies over both Taylor and Severance, is incorporated in the RECORD ON APPEAL, p.328.

The 1951 Severance property has now been divided, the present owners being GRISSINGER (Tax Map No. 080-03-04-009) and LESONDAK (Tax Map No. 080-03-04-008). The Taylor property over which the common road was platted in part is now owned by HARDEE (Tax Map No. 080-03-04-007). The 1988 Plat for B.P. Severance and the 2012 Plat for Dennis and Rosemary Rousey are also incorporated in the RECORD ON APPEAL, pp.334-335, 332.

The Respondent Ms. ROUSEY is the owner of the tract in the rear of these properties (Tax Map No. 080-034-04-010). That tract is without access to any public road. By this action, ROUSEY sought to have her right to the use of an easement granted or declared.

As shown by the 1988 Plat, a Dirt Drive then existed going to the South of the house on the LESONDAK property, continuing through the GRISSINGER tract and on to the ROUSEY property. A copy of the 1997 Plat showing that configuration is incorporated in the RECORD ON APPEAL, p.337.

Sam Austin, the former owner of the LESONDAK tract, testified that he and his wife bought that land in December, 1997. RECORD ON APPEAL, p.193, l.6-11. Austin further testified that, as of the time of their purchase, the portion of the Dirt Drive running to the ROUSEY tract (referenced in the Court's Order as "the Piper Parcel") was overgrown and unused. RECORD ON APPEAL, p.194, l.22-23; 0.242, l.11-22. Except for the attempted use of this area for access by the Respondent and her parents in or after 2012 (which resulted in this action), no evidence of use of that Dirt Drive or the portion thereof leading to the ROUSEY tract was presented. RECORD ON APPEAL, generally.

Mr. Austin further testified that, with the consent of the neighboring landowners, he moved the access road to that area now shown as Severance Drive on the Plat for Dennis and Rosemary Rousey, the Respondent's parents, dated 2012. RECORD ON APPEAL, p.239, l.18 – p.240, l.12. This change was made during his ownership of the present LESONDAK tract and prior to his sale thereof in February, 2009. RECORD ON APPEAL, p.239, l.18 – p.240, l.12; p.241, l.2-15. A copy of the 2012 plat is incorporated in the RECORD ON APPEAL, p.332. This plat shows no extant road or easement to the ROUSEY property other than Severance Drive, which drive is

the original common roadway of 1951 with some adjustments.

The Respondent ROUSEY sought to establish her right to access her property by a) either the roadway shown on the 1988 Plat (hereafter "the claimed LESONDAK or GANDY easement") or b) by using Severance Drive and going past GRISSINGER's front door (hereafter "the claimed GRISSINGER or 'Current' easement"). She alleged theories of easement implied by prior use, by necessity and prescriptive easement.

The Appellants LESONDAK and GRISSINGER sought a declaratory judgment as to any existing easements, claimed trespass to their properties, and waiver as to use of the 1951 common roadway.

This matter came on for trial before the Circuit Court sitting without a jury on March 14th, 2016. The Respondent was represented by Jessica C. Crowson and Christopher Boguski of Rogers Lewis Jackson Mann & Quinn. The Appellants KERRY GRISSINGER and PAUL E. LESONDAK were represented by John Martin Foster. The Defendant WILLIAM P. HARDEE appeared *pro se*.

The Circuit Court issued its Order dated May 3, 2016 and filed May 9,. 2016. That Order characterizes the issues as being "to determine the most appropriate and feasible means of access to the Piper Parcel". RECORD ON APPEAL, p.____. It finds that the "GANDY" or LESONDAK easement is "the most appropriate means of access" to and from the Piper or ROUSEY tract. RECORD ON APPEAL, p.2.

The unreported decision of the Court of Appeals affirming the decision of the Circuit Court was filed January 16, 2019.

GROUNDS OF APPELLATE DECISION

The decision of the Court of Appeals panel disposes of the argument of the Appellants as stated in the following notations (citations of cases omitted):

> We affirm pursuant to Rule 220(b), SCACR, and the following authorities: . . . ("An issue is deemed abandoned if the argument in the brief is only conclusory."); . . . (finding a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule was abandoned). . . , Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered [that] is not set forth in the statement of the issues on appeal."); . . . ("'An unappealed ruling is the law of the case and requires affirmance.' Thus, should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case." . . . ("A ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling."); . . . ("An appellant may not use ... the reply brief as a vehicle to argue issues not argued in the appellant's brief."); . . . ("The appellants have the

responsibility to identify errors on appeal, not the [c]ourt. . . . '[A]ppellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.'" (last alteration by court) . . . ("When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal."); . . . ("Declaratory judgment actions are neither legal nor equitable[,] and[] therefore, the standard of review depends on the nature of the underlying issues.") . . .
[*Piper* v., *Grissinger*, *ET AL.*, Unpublished Opinion No. 2109-UP-030.]

GROUNDS FOR REHEARING

Counsel for Appellants must confess that he lacks the ability to understand the application of principals cited to this appeal. The cited grounds seem to be no more than a grab-bag of grounds to affirm without any application of any reason to the facts of the case or to the grounds of appeal. Counsel cannot respond to a general statement of precedents, nor can the Supreme Court, as required, determine how the stated precedents apply to this case. By this Memorandum, he attempts to respond to what he intuits to be the Court's rationale.

The Respondent raised the question of issue preservation in her Brief. The Appellants responded on point in their Reply Brief. This was the proper and accepted method of discussing an issue raised for the first time in the Respondent's Brief. There was no attempt by the Appellants to argue an additional ground by a Reply Brief.

The Appellants reiterate their arguments stated in the Reply Brief. The Respondent argues that the Appellants failed to specifically argue or raise the issue of easement by necessity at trial. BRIEF OF RESPONDENT, p.13. Precedent requires the Respondent, as the proponent of an easement to prove all elements of an easement, as argued in Appellants' Reply Brief.

The Appellants would note that both parties were requested to submit proposed Orders to the Circuit Court. RECORD ON APPEAL, *Form 4* Order, p.5. This was done by both parties. A copy of the e-mail of Appellants' counsel, with its attachments, is attached hereto and made a part hereof. The Court will note that, in addition to other arguments, the Appellants in fact raised in its proposed Order all issues which form the basis for their appeal.

In addition, the citations above also refer, to the lack of a Rule 59 Motion directed to the Circuit Court. It is Appellants' contention that the requirements for a Rule 59 Motion apply when

the Court below has failed to deal with an issue or to adequately respond to a point of law or fact.

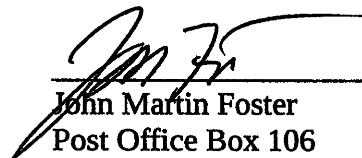
In the case at hand, all arguments were in fact before the Circuit Court. However, regardless of that fact, the precedent on easement requires the proponent to bear the burden of proving all elements of an easement, under whatever grounds. Those elements are not present in the Record, and no evidence of them exists, as argued at length in the Appellants' Briefs.

The Circuit Court dealt with all issues before it by finding a factual and legal basis for an easement in its Order of May 3, 2016. That basis does not exist in the Record. This Appeal did not require the Appellants to re-argue the issues already decided by the Circuit Court in its Order. RECORD ON APPEAL, p.1.

CONCLUSION

For all the reasons set out and referenced above, the Petitioners request that this matter be reheard by the Court of Appeals, and for any other relief to which they may be entitled in law or equity.

Respectfully submitted,



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January 30, 2019

Rock Hill, South Carolina

Subject: Rousey v Lesondak et al.
From: John Martin Foster <jmfoster@comporium.net>
Date: 4/14/16, 10:59 AM
To: "The Honorable Paul M. Burch" <pburchj@sccourts.org>, pburchlc@sccourts.org, Jessica Clancy Crownsn <jcrowson@rogerslewis.com>, cboguski@rogerslewis.com

Judge Burch:

I attach our proposed Order with plat attachments. I trust it is proper for me to tell the Court that our negotiations fell apart once the estimate for the road clearing rose far beyond the level discussed after our hearing.

I understand that the docx file is the form in which you wish to receive the proposed order. Please inform me if I can supply anything further.

Respectfully,

--

Martin Foster

JMFOSTER@COMPORIUM.NET

THE GUARDIAN BUILDING 223 EAST MAIN STREET SUITE 520 ROCK HILL, SC 29730

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— Attachments: —

OrderGrLs.docx	11.9 KB
19512016-04-14-104514.pdf	41.0 KB
19882016-04-14-104546.pdf	116 KB
19972016-04-14-104632.pdf	141 KB
20122016-04-14-104758.pdf	153 KB

STATE OF SOUTH CAROLINA]	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER]	SIXTH JUDICIAL CIRCUIT

HEATHER PIPER ROUSEY,]
Plaintiff,]
vs.]
KERRY GRISSINGER,]
WILLIAM P. HARDEE, and]
PAUL E. LESONDAK,]
Defendants.]

ORDER

C.A. No. 2015-CP-12-00024

This matter came on for trial before the Circuit Court sitting without a jury on March 14th, 2016. The Plaintiff was represented by Jessica C. Crowson and Christopher Boguski of Rogers Lewis Jackson Mann & Quinn. The Defendants KERRY GRISSINGER and PAUL E. LESONDAK were represented by John Martin Foster. The Defendant WILLIAM P. HARDEE appeared *pro se*.

Based upon the evidence presented and the arguments of counsel and the *pro se* party, this Court makes the following Findings of Fact and reaches the following Conclusions of Law:

This action concerns the right to an easement over real property for the purpose of access. In 1951, the real property in question was divided by Taylor, and a common roadway was platted between real property retained by Taylor and that conveyed to Severance. A copy of the 1951 Plat showing the roadway, which lies over both Taylor and Severance, is incorporated herein.

The 1951 Severance property has now been divided, the present owners being GRISSINGER (Tax Map No. 080-03-04-009) and LESONDAK (Tax Map No. 080-03-04-008). The Taylor property over which the common road was platted in part is now owned by HARDEE (Tax Map No. 080-03-04-007). The 1988 Plat for B.P. Severance and the 2012 Plat for Dennis and Rosemary Rousey are also incorporated herein.

The Plaintiff Ms. ROUSEY is the owner of the tract in the rear of these properties, Tax Map No. 080-034-04-010 (hereafter also "ROUSEY"). That tract is without access to any public road. By this action, the Plaintiff seeks to have her right to the use an easement granted or declared.

As shown by the 1988 Plat, a Dirt Drive then existed going to the South of the house on

the LESONDAK property, continuing through the GRISSINGER tract and on to the Plaintiff's property. A copy of the 1997 Plat showing that configuration is incorporated herein.

Mr. Sam Austin testified that he and his wife bought what is now the LESONDAK tract in December, 1997. He further testified that, as of the time of their purchase, the portion of the Dirt Drive running to the ROUSEY tract was overgrown and unused. Except for the attempted use of this area for access by the Plaintiff and her parents in or after 2012 (which resulted in this action), no evidence of later use of that Dirt Drive or the portion thereof leading to the ROUSEY tract was presented.

Mr. Austin further testified that, with the consent of the neighboring landowners, he moved the access road to that area now shown as Severance Drive on the Plat for Dennis and Rosemary Rousey, the Plaintiff's parents, dated 2012. This change was made during his ownership of the present LESONDAK tract prior to his sale thereof in February, 2009. A copy of the 2012 plat is incorporated herein. This plat shows no extant road or easement to the ROUSEY property other than Severance Drive, which drive is the original common roadway of 1951 with some adjustments.

The Plaintiff seeks to establish her right to access her ROUSEY property by a) either the roadway shown on the 1988 Plat (hereafter "the claimed LESONDAK easement") or b) by using Severance Drive and then past GRISSINGER's front door (hereafter "the claimed GRISSINGER easement"). She alleges theories of easement implied by prior use, by necessity and prescriptive easement.

The Defendants LESONDAK and GRISSINGER also seek a declaratory judgment as to any existing easements, claim trespass to their properties, and waiver as to use of the 1951 common roadway.

The Court notes, first, that there is no question as to the Plaintiff's right to access her property by the area designated as common roadway on the 1951 Plat and, basically, that shown on the 2012 Plat as Severance Road. As stated by the Supreme Court:

> "Generally, where property sold is described with reference to a plat or map upon which streets and ways are shown, an easement therein is implied . . . There is an implied covenant that such ways exist and shall continue to exist. Easements implied in accord with such principles are deemed a part of the property to which the grantee is entitled, and neither the grantor nor any person claiming under the conveyances can repudiate the easements or deny they exist, where they are capable of existing"

> [*Billings* v. *McDaniel*, 217 S.C. 261, 265, 60 S.E.2d 592, 593 (1950), *quoting* 17 AM.JUR. *Easements*, ¶ 47, p.958.]

The Court notes, secondly, that Ms. ROUSEY does not deny the existence of this 1951 common roadway easement.

EASEMENT IMPLIED BY PRIOR USE

The Supreme Court has held that:

> [A]n easement implied by prior use exists when: (1) the dominant and servient tracts of land originated from a common owner; (2) the use was in existence at the time the original grantor severed the tracts; and (3) the use was apparent, continuous, and necessary for enjoyment of the dominant tract.
> [*Boyd* v. *Bellsouth Telephone*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006).]

In the case at hand, there was no evidence to show the existence of either the claimed LESONDAK easement or the GRISSINGER easement as of the time when the original grantor severed the tracts. Further, the evidence clearly disproves any continuous use of either the LESONDAK or the GRISSINGER easement as access to the ROUSEY property. The Plaintiff's claim of an easement implied by prior use of these claimed easements fails.

PRESCRIPTIVE EASEMENT

In the same cited case, the Supreme Court set outs the elements of prescriptive easement::

> To establish a prescriptive easement, the party asserting the right must show: (1) continued use for 20 years, (2) the identity of the thing enjoyed, and (3) use which is either adverse or under a claim of right. *Horry County v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993); *Shia v. Pendergrass*, 222 S.C. 342, 351, 72 S.E.2d 699, 703 (1952). When the claimant has established that the use was open, notorious, continuous, and uninterrupted, the use will be presumed to have been adverse. *Poole v. Edwards*, 197 S.C. 280, 283, 15 S.E.2d 349, 350 (1941).
> [*Boyd* v. *Bellsouth Telephone*, 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006).]

Again, the evidence presented clearly demonstrates a lack of continued use for the required period of twenty (20) years. In addition, no evidence was presented that would show use of the designated GRISSINGER easement prior to the purchase of the ROUSEY property by the Plaintiff's parents in 2012. The Plaintiff's claim of prescriptive easement fails.

EASEMENT BY NECESSITY

Given the interconnection of the theories of easement, the *Boyd* Court discussed easement by necessity:

> The party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity. *Kennedy v. Bedenbaugh,* 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002). . . .
>
> The necessity required for easement by necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible. *Jowers [v Hornsby]*, 292 S.C. at 550-51, 357 S.E.2d at 711 (citing *Steele v. Williams,* 204 S.C. 124, 28 S.E.2d 644 (1944); *Merrimon* [*v McCain*], 201 S.C. at 76, 21 S.E.2d at 404; *Lawton v. Rivers,* 13 S.C.L. (2 McCord) 445 (1823)).
>
> [*Boyd* v. *Bellsouth Telephone,* 369 S.C. 410, 418-420, 633 S.E.2d 136, 140-141 (2006).]

The evidence in this matter makes clear the former unity of title of the tracts in question, and their severance. The question is whether the Plaintiff has demonstrated that either the claimed LESONDAK or GRISSINGER easements are necessary to her in light of the unquestioned existence of the platted common roadway along the HARDEE tract.

Faced with a similar situation in *Morrow* v. *Dyches,* 328 S.C. 522, 492 S.E.2d 420 (Ct.App. 1997), the Court of Appeals stated:

> Only reasonable necessity is required; thus, the easement must be more than merely convenient, but it does not need to be absolutely essential. *Jowers* v. *Hornsby,* 292 S.C. 549, 357 S.E.2d 710 (1987). . . . Although the Morrows claim necessity because they wish to use the CSX tract for large tractor-trailers to access the rear of their store, their claim fails because the entire eastern side of their tract borders on and is accessible by a public road. The doctrine only provides reasonable access to the dominant estate when

there is none; it does not provide a means for ensuring a preferred method of access to a particular portion of a tract when access to the tract is otherwise available. Cf. Hayes v. Tompkins, 287 S.C. 289, 337 S.E.2d 888 (Ct.App. 1985) (easement by necessity across adjoining land was upheld because a deep gully separated the dominant estate from a bordering public road).

[*Morrow* v. *Dyches*, 328 S.C. 522, 529, 492 S.E.2d 420, 424 (Ct.App. 1997)].

The Plaintiff has clear access by the platted common roadway. The other claimed easements are those she prefers. Under the established precedent of this State as recited in *Morrow, supra*, the Plaintiff has failed to demonstrate necessity in those claimed easements over GRISSINGER or LESONDAK.

The Court further notes that allowance of the claimed easements would necessitate either a roadway almost in front of GRISSINGER's home, or within a few feet of that of LESONDAK. Thus, equitable grounds also exist to deny those claimed easements on the grounds of necessity.

COMMON ROADWAY EASEMENT

Having confirmed the Plaintiff's right to an easement over the 1951 common roadway and the existing Severance Drive as it runs along the HARDEE property, the Court rejects any defense of waiver or estoppel as to the existing storage building or well on the GRISSINGER property that may exist within the common roadway. GRISSINGER denies the same to be within that area. If, however, the same are determined to lie therein by survey, the Plaintiff shall have the right to cause them to be repositioned.

TRESPASS

The Defendants GRISSINGER and LESONDAK have counterclaimed for damages. The Court finds any such damages to be *de minimis*. It accordingly awards no damages for the Plaintiff's past use of the claimed GRISSINGER or LESONDAK easements.

INJUNCTION

The testimony of the parties demonstrates a history of ill feeling and threats between the

parties, including threats of arrest of Mr. GRISSINGER by the Chester Sheriff's Department arising from the Plaintiff's use of her claimed easement past his front door.. By motion of counsel and upon the Court's own motion, and good cause appearing therefor, the parties herein, and each of them, and any officer, agent, servant, employee, attorney or person in active concert or participation with them who receives actual notice of this Order by personal service or otherwise, are hereby restrained from doing any act or thing with, or involving, the other parties herein which would endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the community.

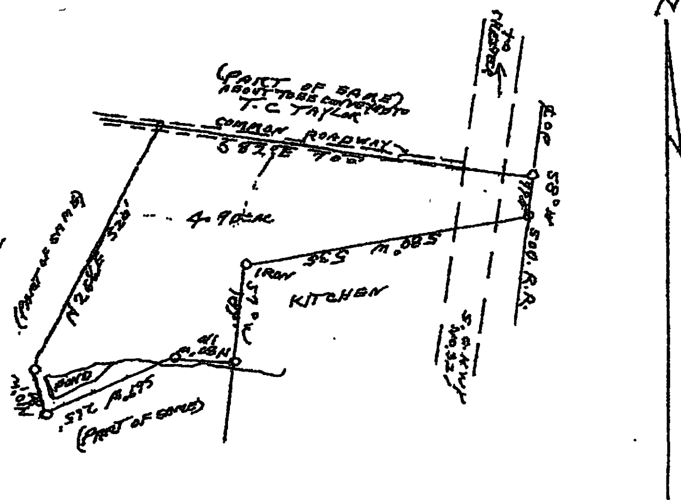
AND IT IS SO ORDERED.

____
Paul M. Burch
Judge for the Sixth Judicial Circuit

April __, 2016

Pageland, South Carolina

1/PT 11:50 AM.



PLAT OF
PROPERTY BELONGING
TO
A.J. TAYLOR
AND
MRS. UNICE TAYLOR
ABOUT TO BE CONVEYED TO
LUCILLE T. SEVERANCE
CHESTER COUNTY, S.C.

Nov. 16, 1951

SCALE 1" = 200'
L.H. MELTON

Recorded
November 24, 1951
Delivered to:

B-102/2

182-p.2

LUCILLE T. SEVERANCE
Deed Book 333, Page 005

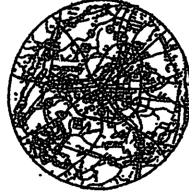
CHARLES C. SHIRLEY, JR.
Deed Book 486, Page 619
Plat Book "J", Page 44

ANDREW GANDY, JR.

CLARENCE V. JACKSON

ROSEMARY ROUSEY

AREA = 4.012 Acres



LOCATION MAP
NOT TO SCALE

PLAT OF SURVEY FOR E. P. SEVERANCE

BEING A 4.012 ACRE TRACT
LOCATED ON U.S. # 321

CHESTER TOWNSHIP,
CHESTER COUNTY,
SOUTH CAROLINA

JUNE 27, 1988

SCALE: 1" = 50'

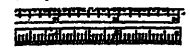
I HEREBY CERTIFY THAT THE RATIO OF PRECISION OF THE UNADJUSTED FIELD SURVEY IS 1 IN 10,000 AND THAT THE AREA WAS COMPUTED BY THE D.M.D. METHOD.

I HEREBY CERTIFY THAT THIS PLAT REPRESENTS AN ACTUAL FIELD SURVEY BY ME THIS DATE AND THAT, TO THE BEST OF MY KNOWLEDGE, THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN AND THAT THE STRUCTURES SHOWN ARE NOT LOCATED IN A SPECIAL FLOOD HAZARD ZONE UNLESS NOTED.

EDWARD R. WOODWARD R.L.S.

NOTE:
EIP = EXISTING IRON FOUND
NIP = NEW IRON REBAR SET

222 SALUDA STREET
ROCK HILL, SOUTH CAROLINA
PHONE: 803-324-2475



C·130|9B

Cab C Slide 130 Pg 9B

PLAT OF SURVEY FOR
FRANK WILLIAM YOUNG
BEING A 3.975 ACRE TRACT
LOCATED ON SOUTHERN RAILROAD & U.S.321
CHESTER TOWNSHIP, CHESTER COUNTY, SOUTH CAROLINA
DECEMBER 9, 1997
REFERENCE: TAX MAP#80-3-4-8
D.B.774 PG.178 P.B."T"PG.4

Cab C Slide 130 Pg 9B

9007908 Bk: Pg:

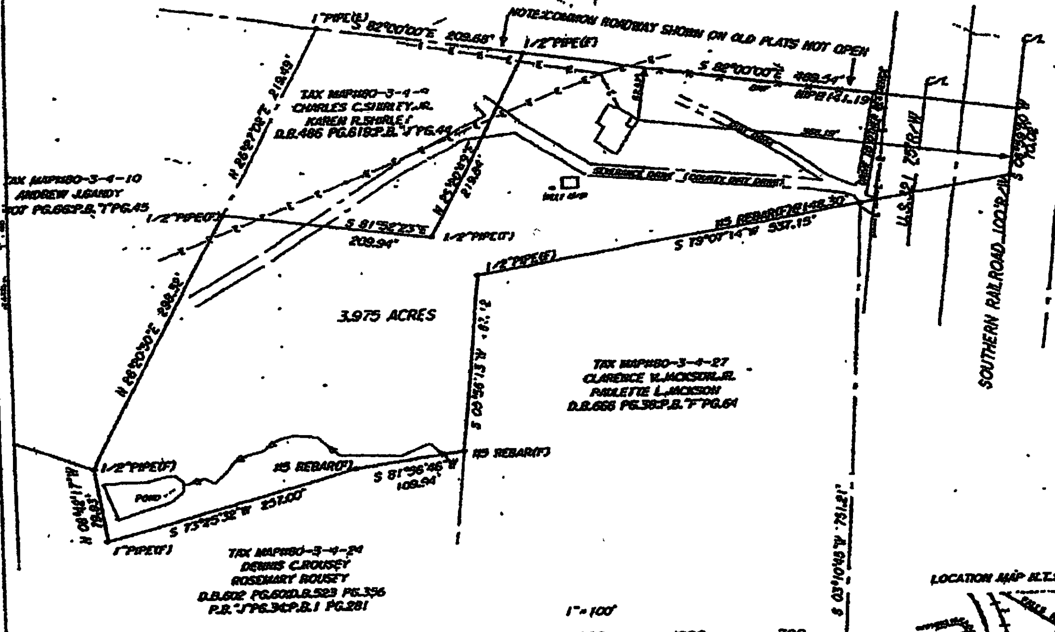
FILED, RECORDED, INDEXED
03/11/1998 02:39P
Rec Fees 10.00 St Fees 0.00
Co Fees 0.00 Pages: 1
Clerk of Court
Sue E. Carpenter

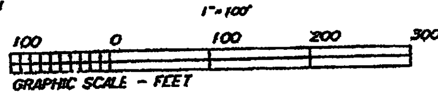
The subdivision plat shown hereon has been found to comply with the Chester County Land Development Regulations and has been APPROVED FOR RECORDING in the office of the Clerk of Court of Chester County, South Carolina.

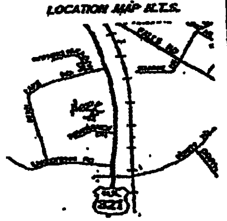
3-11-98

Chester County Planning Commission

MAGNETIC NORTH







THE INFORMATION SHOWN HEREON IS THE RESULT OF A SURVEY PERFORMED UNDER THE SUPERVISION OF WILLIAM W. HIPP AND WAS COMPLETED ON THE DATE SHOWN ABOVE. THE SURVEY WAS PERFORMED IN ACCORDANCE WITH THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING AS ADOPTED UNDER THE CODE OF LAWS OF SOUTH CAROLINA TITLE 40, CHAPTER 21, AND IS OF CLASS A STANDARD. THE AREA WAS DETERMINED USING THE D.M.D. METHOD. BEARINGS WERE REFERENCED AS SHOWN. ENCROACHMENTS ARE AS SHOWN. SUBJECT PROPERTY IS NOT WITHIN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA MAPS.

NOTE:
EIP = EXISTING IRON PIN
NIP = NEW IRON PIN
PK = PK NAIL
RR = RAILROAD SPIKE

HIPP LAND SURVEYING
3574 VICTORIAN HILLS DRIVE
RICHBURG, S.C. 29729
PHONE (803) 789 3716

Cab D Slide 183 Pg 8B

PLAT OF SURVEY FOR
DENNIS C. & ROSEMARY ROUSEY
CHESTER TOWNSHIP, CHESTER COUNTY, SOUTH CAROLINA

MARCH 28, 2012

REFERENCES; TAX MAP#080-03-04-010

D.B.944 PG.278; P.B."I"PG.45

201200072583
Filed for Record in
CHESTER COUNTY SC
SUE K. CARPENTER, CLERK OF COURT
05-16-2012 At 03:38:33 pm.
PLAT 10.00
Volume ____ Page ____

HAMILTON, DELLENEY & GRIER, P.A.
ATTORNEYS AT LAW
P.O. BOX 808
CHESTER, SC 29706-0808

MAGNETIC NORTH

T.M.#80-3-4-6
JEFFERY W.KEENON
D.B.580 PG.271

T.M.#80-3-4-20
FRANK L.WRIGHT-LE
JEAN D.WRIGHT-LE
D.B.891 PG.102
CAB."J"S-6 PG.5B

T.M.#80-3-4-7
WILLIAM P.HARDEE
D.B.754 PG.4

1/2"pipe(f)
S 77°51'46"E 308.27'
N 70°11'38"E 261.67'
N 70°11'50"E 88.32'
#8 rebar(f)
3/4"pipe(f)
S 78°23'57"W 11.77'
N 00°49'36"W 194.17'
3/4"pipe(f)
UTY.BLDG.
S 77°51'46"E 209.65'
NOTE: SHOWN AS A COMMON ROAD (P.B."I"PG.45; P.B."J"PG.44; P.B."I"PG.4)
SEVERANCE DRIVE
GRAVEL DRIVE
S 60°35'24"E 420.85'
S 30°34'26"W 219.51'
TO CHESTER

T.M.#80-3-4-9
KERRY GRISSINGER
D.B.781 PG.322; P.B."J"PG.44

4.796 ACRES

1/2"pipe(f)
N 00°59'57"W 64.37'
1/2"pipe(f)
nip
2.18'
well
frame house
S 30°28'26"W 298.59'

T.M.#80-3-4-8
DOROTHY JEAN JOHNSON
D.B.984 PG.125; CAB."C"S-130 PG.9B

HAMILTON, DELLENEY & GRIER, P.A.
ATTORNEYS AT LAW
P.O. BOX 808
CHESTER, SC 29706-0808

TO LANDSFORD ROAD
U.S.321

T.M.#80-3-4-17
JOHN RICE
D.B.1003 PG.194
CAB."C"S-165 PG.3B

3/4"pipe(f)
N 69°45'32"W 387.58'
1/2"pipe(f)

NOTE:
EIP = EXISTING IRON PIN
NIP = NEW IRON PIN
PK = PK NAIL
RR = RAILROAD SPIKE
P.P. PINCHED PIPE

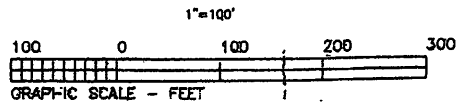
1/2"pipe(f)

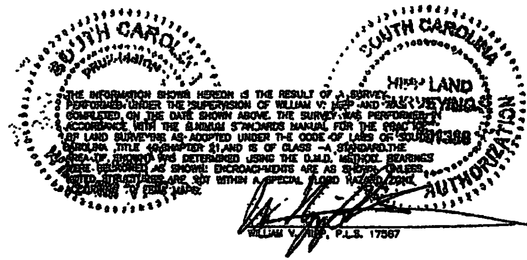
T.M.#80-3-4-24
DENNIS C.ROUSEY
ROSEMARY ROUSEY
D.B.602 PG.80; P.B.1 PG.281
P.B."J"PG.34

NO NEW LOTS OR LINES ESTABLISHED

HIPP LAND SURVEYING, INC.
3574 VICTORIAN HILLS DRIVE
RICHBURG, S.C. 29729
PHONE (803) 789 3716

1"=100'





The South Carolina Court of Appeals

Heather Rousey Piper, Respondent,

v.

Kerry Grissinger, William P. Hardee, and Paul E. Lesondak, Defendants,

Of Whom Kerry Grissinger and Paul E. Lesondak are the Appellants.

Appellate Case No. 2016-001104

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_______________ J.

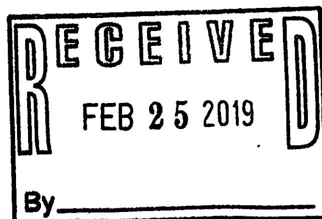
_______________ J.

_______________ J.

Columbia, South Carolina

FILED
February 21, 2019

cc:



John Martin Foster, Esquire
Jessica Clancy Crowson, Esquire
Christopher Lee Boguski, Esquire
The Honorable Paul M. Burch