

EXHIBIT A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Civil Action No.: 2014-CP-40-01805
)	
Country Properties, LLC)	
)	
)	ORDER GRANTING DEFENDANT'S
Plaintiff,)	RULE 60(b) MOTION
)	
v.)	
)	
Nancy Dunn Martin,)	
)	
Defendant.)	

RECEIVED
 MAR 29 2019
 SC Court of Appeals

STATEMENT OF THE CASE

This matter is before this Court, pursuant to the Rule 60(b) motion of Defendant Nancy Dunn Martin (“Defendant” or “Martin”). This matter initially came before the Court upon the complaint of Plaintiff Country Properties, LLC (“Plaintiff” or “Country Properties”). The subject of the underlying case relates to an easement for the use of a dirt road on Martin’s property. Following a trial held March 21–24, 2016, this court issued an order finding, among other things, that the Plaintiff had an easement across Martin’s property and that the road across Martin’s property was also a public road.

Following the issuance of this Court’s order, Defendant appealed to the Court of Appeals on August 22, 2017. On August 27, 2017, Defendant discovered new evidence related to the proceedings. On August 30, 2017, Defendant petitioned the appellate court for leave to file a Rule 60(b) Motion to seek Relief from Judgment or Order before this court. The Court of Appeals granted Defendant’s motion on October 5, 2017.¹ On October 24, 2017, Defendant filed a Rule 60(b) motion with this Court. The parties appeared and argued the Motion on July 18, 2018 and

¹ Pursuant to the Court of Appeal’s order, the appeal is held in abeyance so that the trial court can entertain the Rule 60(b) motion.

this order follows. After review of the motion and arguments of the parties, I find that Defendant's motion should be granted and that a new trial should be ordered.

BACKGROUND

Country Properties filed suit on March 18, 2014 in Richland County, South Carolina listing five causes of action against Martin. Plaintiff sought access to Defendant's property under three theories of declaratory judgment: that it was deeded a right of access, that it held a prescriptive easement, and that the road through Defendant's property is public. Based on the first two theories, Plaintiff also sought a permanent injunction to prevent obstruction of its use of the road through Defendant's property. Defendant answered the complaint, opposing all causes of action asserted by Plaintiff, and counterclaimed under a theory of adverse possession or prescription by servient tenement.

The case was referred by consent to the Master-in-Equity by The Honorable Casey Manning in July 2014. The matter was tried before this court on March 21–24, 2016. Following the presentation of numerous exhibits and witness testimony, this court issued an Order in favor of the Plaintiff. The final order, filed on September 27, 2018, found that Plaintiff has an easement through Defendant's property, that Defendant should be enjoined from obstructing Plaintiff's access to the easement road, and that the road through Defendant's property is an unmaintained public road of Richland County. The order relied in part on evidence from the Plaintiff that Raglin Creek formed a natural barrier impeding Plaintiff's access to its property—thus necessitating the need for access via Defendant's property. Plaintiff avowed that a dam that had previously created passage across the creek was washed out completely and unusable. Following the order finding for the Plaintiff, Defendant filed a motion to alter or amend that was subsequently denied. Defendant appealed the case to the Court of Appeals, but shortly thereafter discovered new

evidence regarding the dam. Aerial photos of the dam showed that it had in fact been recently repaired. The photos imply that vehicular traffic may now traverse the dam. This development suggests that the Plaintiff's need for the use of Defendant's property may be significantly less than indicated at trial. Based on this information, Defendant sought and received leave from the Court of Appeals to file a Rule 60(b) motion for relief from judgment. Following a hearing on this matter, I conclude that Defendant's motion should be granted and a new trial ordered.

DISCUSSION

Defendant moves for relief from judgment on the basis of Rule 60(b)(2), SCRCP. Rule 60(b) provides, in relevant part, as follows:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

Rule 60(b), SCRCP. In order to prevail on a Rule 60(b)(2) a moving party must show that the new evidence: "(1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005) (quoting James F. Flanagan, *SOUTH CAROLINA CIVIL PROCEDURE* 484 (2d ed. 1996)). The decision to grant a motion under Rule 60(b), SCRCP, is within the sound discretion of the trial judgment and will be reversed only under an abuse of discretion standard. *See Se. Hous. Found. v. Smith*, 380 S.C. 621, 636, 670 S.E.2d 680, 688 (Ct. App. 2008) (citations omitted); *see also Lanier*, 364 S.C. at 215–16, 612 S.E.2d at 458 (citations omitted).

The new evidence presented by Defendant is aerial photographs taken by a drone of a dam on Plaintiff's property. These photos depict a full functional dam with no damage apparent in the photos. At trial, Plaintiff presented witness testimony by one of its two members about the dam. The testimony indicated that the dam had previously been dangerous or unstable, preventing usage by larger vehicles. Testimony indicated that \$70,000 in repairs had previously been made to the dam, but that the October 2015 flood that gravely affected South Carolina caused significant damage to the dam, causing it to again be impassible. Notably the trial in this matter was held only a few short months after the historic October 2015 floods giving little intervening time for repairs or improvements to the deluged dam.

The new evidence presented however suggests that Plaintiff has now had the opportunity to repair the dam, making it passable, and therefore eliminating any need for Plaintiff to traverse Martin's property. The evidence at trial suggested that a large portion of Plaintiff's property could not be reached by Plaintiff's other existing methods of egress because of the impeding creek and damaged dam. The evidence now suggests the Plaintiff can access all of its property via routes that do not transect Martin's property, which changes the court's analysis. Therefore, I find that the new evidence supports the conclusion that the outcome of a new trial would likely be different than the outcomes previously reached. Because the likely result of the trial would be changed, I find that this new evidence is material to the issues to be determined and that it is appropriate to order a new trial.

The timing of events in this case indicate that Defendant could not have obtained this new evidence in time to present it at the original trial. The dam is located near the center of Plaintiff's property (a little over 1000 acres) and is not visible from Defendant's property. The new evidence was gathered using an aerial drone — not a technology one typically employees. Prior to the

original trial, Defendant did not have an opportunity to view the dam or to ascertain its importance to the accessibility of Plaintiff's property. Further, the dam had recently been damaged by the flood and there is no evidence in the record to suggest it had been repaired at the time of the original trial. The record completely lacks any similar evidence to that now presented by the Defendant. Additionally, this new evidence does not conflict with prior evidence or testimony about the dam, but rather presents new information about the state of the dam and its role in this case. Thus, this new evidence is not cumulative or impeaching, nor was it obtainable by Defendant prior to the original trial. Therefore, it is appropriate to consider this new evidence now.

Given that Defendant has presented new evidence it could not have previously discovered, that this evidence materially affects the prior determinations of the court and likely changes the outcome of the case, and that this evidence is neither cumulative nor impeaching, I conclude that Defendant's Rule 60(b) motion should be granted and a new trial ordered.

ORDER

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment is **GRANTED**.

IT IS FURTHER ORDERED that a new trial shall be held in this matter.

IT IS SO ORDERED.

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SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-40-01805

Country Properties, LLC,

Nancy Martin,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: s/Joey R. Floyd P.O. Box 61110, Columbia, South Carolina 29260	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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 (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

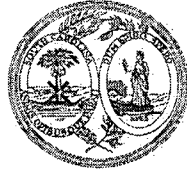
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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.

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Richland Common Pleas

Case Caption: Country Properties LLC vs Nancy Dunn Martin
Case Number: 2014CP4001805
Type: Master/Order/Form 4

It is so Ordered

s/Joseph M. Strickland, 3055