

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

ALFRIGH G. WILLIAMS

) CASE NO.: 2017-CP-08-1029
)

Plaintiffs,

VS.

) FINAL ORDER
)

MYRA L. SCOTT

Defendant

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APR 08 2019

SC Court of Appeals

This matter came before me for hearing on the merits on December 17, 2018 pursuant to notice and pursuant to Consent Order of Reference with Finality.

PLEADINGS AND PARTIES

This case was commenced by the filing of a Summons and Complaint of the Plaintiff on April 19, 2017, along with related pleadings, wherein he seeks an order of the Court pursuant to the South Carolina Uniform Declaratory Judgment Act, ("SCUDJA") declaring and determining the relative rights and relations of the parties concerning an alleged easement, along with certain incidental relief.

The Defendant timely filed her Answer on May 4, 2017 wherein she denied the existence of the easement and raised certain legal and equitable defenses.

Service in all instances was properly affected as evidenced by the record.

Plaintiff is represented by E. Mason West, Esquire of the Berkeley County Bar. Defendant was originally represented by Jeffrey T. Spell, Esquire; however, a Consent Order of Substitution of Counsel was filed by the Defendant on September 20, 2018 wherein C. Mac Gibson, Jr., Esquire

was to be substituted as Counsel of record. On September 27, 2018, Mr. Gibson was substituted as Counsel for the Defendant per the Order of the Honorable Dedra L. Jefferson.

SUBJECT MATTER

This case revolves around the rights of adjoining landowners who own property in the Cainhoy Community of Berkeley County with respect to an alleged access easement. The easement is claimed by the Plaintiff to be located across the property of Defendant Myra Scott, bearing Berkeley County TMS# 263-00-01-015, "Scott Lands". If declared valid, the easement serves property of the Plaintiff bearing Berkeley County TMS# 263-00-01-041, "Williams Lands".

THE CONTROVERSY

During or about the year 2011, Defendant constructed a fence without gates for "through passage" across the Scott Lands thereby impeding Plaintiff's ability to access the Williams Lands. Plaintiff objected to the actions of the Defendant. The instant case followed.

The essence of Plaintiff's position in these proceedings is that his predecessors in title to the Williams Lands were granted a perpetual access easement appurtenant to the Williams Lands across the Scott Lands and that when he (the Plaintiff) acquired the Williams Lands he acquired the same easement rights of his predecessors. Plaintiff claims the easement provides him a perpetual, free and unlimited right of access.

THE RECORD

By stipulation of counsel at the call of the case, and by admission in evidence during the trial of the case without objection, multiple exhibits consisting of various deeds, plats, photographs, maps, were submitted. *Collectively Plaintiff's Exhibit's 1, 2, 3, 4 and Defendant's Exhibit 1.*

Plaintiff presented three (3) witnesses, namely himself, Alfrigh Williams, the Defendant, Myra Scott, and Plaintiff's brother, and predecessor in title, Chuck Williams. The Defendant presented

two (2) witnesses, namely the Defendant herself, Myra Scott, and her expert Dean Britt, a land surveyor:

FINDINGS OF SALIENT FACTS

From the record before me, from the testimony of the witnesses in open court under oath and upon the entirety of the within proceedings, by a preponderance of the evidence, I find the following salient facts:

1. Plaintiff is the fee simple owner of the Williams Lands, a 0.55 acre parcel of land located in the Cainhoy area of Berkeley County, bearing Berkeley County TMS # 263-00-01-041.
2. His source deed is part of the record. *Plaintiff's Exhibit 1.*
3. Defendant is the owner of the Scott Lands, a 0.92 acre parcel of land also located in the Cainhoy area of Berkeley County bearing Berkeley County TMS # 263-00-01-015, which adjoins the Williams Lands.
4. Her source deed is part of the record. *Plaintiff's Exhibit 1.*
5. The Williams Lands and the Scott Lands are contiguous along a common boundary line which has a distance of one hundred twelve (112') feet, more or less.
6. The Williams Lands and the Scott Lands were at one time held by a single owner, Katie Drayton.
7. In 1970, Katie Drayton and Mary Jane Blunt commissioned a survey plat by R.D. Guerry, RLS, which affected the subdivision of the Katie Drayton lands into Parcels "A", now the Scott Lands and Parcel "B", now the Williams Lands, which plat is found of record in Plat Book T at Page 64. *Plaintiff's Exhibit 1.*
8. Katie Drayton then conveyed Parcels A and B to Mary Jane Blunt by deed dated July 31, 1970 and found of record in Book A213 at Page 173.
9. Mary Jane Blunt thereafter conveyed Tract B to Lavenia Porcher and Chuck E. Williams by deed dated September 2, 1980 and found of record in Book A-410 at Page 46, which in addition to the description of the property being conveyed contains the following:

“ALSO:

A perpetual free and unlimited right of access to and from the lot herein conveyed as a means of ingress and egress over and upon and across the adjacent lot delineated on said plat and described as Tract “A” by means of a roadway to be constructed at the expense of the grantees from the roadway delineated on said plat and to the lot herein conveyed which said right-of-way shall be and remain appurtenant to the lot herein conveyed.”

10. Each subsequent deed in the chain of title to the Williams Lands, including the Williams source deed, incorporated the same easement language.
11. During or about the year 2011, Defendant constructed a fence surrounding the Scott Lands.
12. Defendant’s construction of the fence has blocked, impeded and interfered with Plaintiff’s ability to exercise his right of ingress and egress over, upon and across the Scott Lands to access the Williams Lands.
13. In Plaintiff’s case in chief, on examination by Plaintiff’s counsel, Defendant conceded and acknowledged for the first time, that Plaintiff has a valid and enforceable easement across the Scott Lands and that the presence of her fence does in fact block Plaintiff from using his easement.
14. The grant or reservation of the easement in the Mary Jane Blunt deed (§8, *supra*) does not contain metes and bounds or figures giving definite dimensions of the easement.
15. As to the scope and extent of the easement, Defendant’s expert witness Dean Britt, a land surveyor, testified that the width of the easement is typically not less than twenty (20’) feet wide.

CONCLUSIONS OF LAW

The Court concludes as a matter of law as follows:

1. This is a declaratory judgment case.
2. The pleadings and proceedings herein are adequate, complete and proper.
3. This Court has jurisdiction over the parties and the subject matter.
4. Venue is proper.

5. This court has the power and authority to declare rights; the status and the legal relations between and among the parties pursuant to *S.C. Code Ann. § 15-53-20*.
6. There must be a justiciable controversy between and among the parties in order for the Court to adjudicate a matter under *S.C. Code Ann. § 15-53-20*.
7. The parties agree that there is an easement appurtenant to the Williams Lands over, upon and across the Scott Lands.
8. There is no longer a justiciable controversy before me regarding the *existence* of the easement appurtenant to the Williams Lands and over, upon and across the Scott Lands.
9. Based on the absence of a dispute about the existence of an easement, I determine, deem and declare that there is a valid and enforceable access easement in perpetuity across the Scott Lands to the Williams Lands.
10. The parties disagree about the width of the easement.
11. There is therefore a justiciable controversy before me as to the scope and extent of the easement.
12. It is well established and well settled in South Carolina that an easement is a right which one person has to use the land of another for a specific purpose. *Murrells Inlet Corporation v. Ward*, 378 S.C. 225, 662 S.E. 2d 452 (Ct. App 2008), *Frierson v. Watson*, 371 S.C. 60, 67, 636 S.E. 2d 872, 875 (Ct. App. 2006). *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E. 2d 163, 169 (2015).
13. It is well established and well settled that an easement may be created by grant or reservation in a deed. *Windham v. Riddle*, [381 S.C. 192, 672 S.E. 2d 578 (2009)]. 12 *S.C. Juris, Easements § 6*.
14. It is well established and well settled in South Carolina that although the existence of an easement is a question of fact in a law action, the determination of the extent of an easement is an equitable matter. *Jowers v. Hornsby*, 292 S.C. 549, 551, 357 S.E. 2d 710, 711 (1987); *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487 S.E. 2d 187, 190 (1997).
15. In determining the scope and extent of an easement, this Court, being one in equity, must give consideration to what is essentially necessary to the enjoyment of the easement. *Sandy Island Corp.*, 246 S.C. 419-20, 143 S.E. 2d at 806; *Carolina Land Company v. Bland*, 265 S.C. 98, 217 S.E. 2d 16 (1975); *Jacobs v. Service Merchandise Co.*, 297 S.C. 123, 375 S.E. 2d 1 (Ct. App. 1988) 12 *S.C. Juris, Easements § 20*.

16. In so doing, if the language in the grant or reservation is uncertain or ambiguous in any respect, the court may inquire into and consider all surrounding circumstances to determine the intention of the parties. *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E. 2d 179,181 (1968).
17. In making that inquiry, it is not essential to the validity of a grant of an easement that it be described by metes and bounds or by figures giving definite dimensions of the easement. *Simmons v. Berkeley Elec. Co-op, Inc.*, 404 S.C. 172, 744 S.E.2d 580 (Ct. App. 2013).
18. In South Carolina, ordinarily the owner of an easement has the duty to keep it in repair. *Hayes v. Tompkin* 287 S.C. 289, 337 S.E. 2d 888 (1985). Further, taking into consideration the burden the easement of right of way places upon the Defendant's property, the Plaintiff shall have the duty to keep the right-of-way in reasonable repair.
19. In the adjustments and balancing of the equities, I determine, deem and declare that the parties to the Mary Jane Blunt deed, intended that the original Grantees of Parcel B, that is to say what became the Williams Lands, their heirs and assigns, should and must have an easement with a width sufficient to serve its intended purpose of reasonable access.
20. In the adjustments and balancing of the equities, I further determine, deem and declare on the record before me, and taking into consideration typical easements of Berkeley County as a guide, that a fair and reasonable interpretation of the intent of the parties to the Mary Jane Blunt deed is that the subject easement has, and should have, at all points along its course a width of twenty (20') feet in order to be useful and practical and serve its obvious intended purpose.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, DECLARED AND DECREED as follows:

1. Plaintiff, his heirs and assigns, is possessed of an easement appurtenant as the owner of the Williams Lands which entitles him to access to and from the Williams Lands as a means of ingress and egress over and upon and across the Scott Lands.

2. The easement area shall be and is twenty (20') feet in width and is situate generally along the length of the southern boundary of the Scott Lands for the full distance to the intersection with the Williams Lands.
3. Plaintiff shall have the duty to keep the right of way in reasonable repair.
4. Defendant may at her option, and at her expense relocate her fence northward and inward on the Scott Lands, thereby allowing the area of the easement declared by this order to be unrestricted and fully outside of the enclosed portion of her yard; or in the alternative, Defendant may retain the fence where and as it is; provided she causes or allows the deconstruction of the fence in two locations, one at the entranceway to the easement from Cainhoy Road and one along the common boundary line of the Williams Lands and the Scott Lands to allow passage by the Plaintiff, his invitees, guests, heirs and assigns, for all lawful purposes.
5. Plaintiff will be responsible for removal of the Defendant's fence along the boundary line of Williams and Scott lands for a distance of 20 feet to allow access from the easement to Plaintiff's property.
6. Should Defendant elect to erect a front gate, Defendant shall be responsible for the installation, upkeep and maintenance of the front gate, that being the gate closest to Cainhoy Road.
7. If Defendant chooses to lock the front gate, she shall immediately provide the Plaintiff, his heirs and assigns, a key and keep the lock at all times in working order.
8. If the lock is replaced, a substitute key shall be provided the Plaintiff, his heirs and assigns.
9. Should Defendant elect to allow access via gates, Plaintiff shall be responsible for the installation, upkeep and maintenance of the back gate, that being the gate closest to Plaintiff's property.
10. Each party will be responsible for their own costs and attorney fees.

AND IT IS SO ORDERED.

(JUDGE'S SIGNATURE PAGE TO FOLLOW)

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NO. 2017-CP-08-1029**

Alfrigh G. Williams,

Myra L. Scott, et al

PLAINTIFF(S)

DEFENDANT(S)

E. Mason West PO Box 1869 Moncks Corner, SC 29461	Attorney for : <input type="checkbox"/> Plaintiff <input 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.
- 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 PUBLIC 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)
		\$
		\$
		\$
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 Page to Follow)

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

E. Mason West
PO Box 1869
Moncks Corner, SC 29461
ATTORNEY(S) FOR THE PLAINTIFF(S)

C. Mac Gibson Jr
1473 Stuart Engals Blvd
Mt Pleasant, SC 29464
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Berkeley Common Pleas

Case Caption: Alfrigh G. Williams VS Myra L. Scott
Case Number: 2017CP0801029
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079