

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

SEVENTH JUDICIAL CIRCUIT

The Revocable Trust Agreement of Manning Lee Williams dated October 28, 2015,

C.A. No. 2011-CP-42-02079

Plaintiffs,

AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION TO RECONSIDER

v.

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Cynthia Norden and Raymond Norden,

MAY 20 2019

Defendants.

SC Court of Appeals

This matter came before the Court on Plaintiffs' Motion for Summary Judgment, and Defendants' Motion to Reconsider. The Court held a hearing on the Motion for Summary Judgment on Monday, October 10, 2016, in Spartanburg, South Carolina and a hearing on the Motion to Reconsider on Thursday, March 21, 2019 in Spartanburg, South Carolina. After careful consideration and review of the pleadings, motions, memoranda, and arguments of counsel at both hearings, the Court makes the following findings of fact and amended conclusions of law and rules as follows:

I. Factual Background and Procedural History.

This case has been pending for seven years, and Plaintiff Manning Williams has since passed away on February 27, 2017¹. The case was originally filed May 10, 2011, when Plaintiffs filed suit seeking to quiet title and obtain a declaratory judgment regarding their rights in an easement over Defendants' property. Plaintiffs own approximately 14.17 acres of land located

¹ By Order dated September 10, 2018, The Revocable Trust Agreement of Manning Lee Williams dated October 28, 2015 was substituted as the proper plaintiff in this litigation. The pleadings have been revised to reflect this change.

off Gibson Road near Landrum, South Carolina. Plaintiffs' property is landlocked and does not have any frontage on Gibson Road or any other public road; they access their property via an easement road that crosses over Defendants' property from Gibson Road to the landlocked tract.

Plaintiffs' easement was granted to them when they purchased their property in 1976. The deed to Plaintiffs' property expressly states: "Grantor herein conveys all his right, title, and interest in and to an easement thirty (30') feet in width for egress and ingress from public roads to the property herein conveyed." (See Deed from J. Baker Gibson to Manning L. Williams and Eleanor C. Williams recorded as Deed Book 43-G, Page 0806). The deed to Defendants' property specifically states that their property is "subject to a thirty (30') foot road easement as shown and designated upon plat dated September 27, 1973 and recorded in Plat Book 72 at Pages 208-209, aforesaid county records." (See Deed from Loretta B. Hyder to Cynthia W. Norden and Raymond A. Norden recorded as Deed Book 87-Z, Page 376).

The easement road that Plaintiffs use has been in the same location and has followed the same route to their tract for decades. This litigation arose after Defendants purchased their property and began blocking and obstructing Plaintiffs' access to the easement at the entrance gate, which began in 2011. Defendants' actions of blocking the gate and Plaintiffs' use of the easement road occurred both before and after Plaintiffs commenced this litigation.

By Order dated July 29, 2011, this Court entered a Preliminary Injunction in favor of Plaintiffs and ordered, among other things, that Defendants were enjoined from blocking access to the easement identified in Plat Book 72 at pages 208-09 in any way during the pendency of the litigation. The Court concluded that the status quo is and has been Plaintiffs' open and unfettered access to the easement and also concluded that Plaintiffs had a high likelihood of

success on the merits because of language in both the deed granting the easement and in Defendants' deed reserving the easement.

Since the entry of the Preliminary Injunction, the parties have exchanged written discovery requests and responses, produced documents, participated in depositions, and amended the initial pleadings. Defendants amended their answer and filed counterclaims against Plaintiffs on November 20, 2014 and again on January 29, 2015. Defendants waited three years and six months after they were served with Plaintiffs' Complaint and seven years after they purchased their property to assert any claims against Plaintiffs.

Plaintiffs moved for summary judgment on December 16, 2015 and filed a memorandum in support of their motion on September 30, 2016. Defendants filed an Affidavit of Defendants on October 6, 2016, and Plaintiffs filed a Reply brief in support of their summary judgment motion on October 7, 2016. The Court held a hearing with all parties present and represented by counsel on Monday, October 10, 2016, in Spartanburg, South Carolina. The Court issued an Order Granting Plaintiffs' Motion for Summary Judgment on January 14, 2019. Defendants filed a Motion to Reconsider on January 14, 2019, and Plaintiff filed a Response in Opposition to Defendants' Motion to Reconsider on January 23, 2019. The Court held a hearing with all parties represented by counsel on Thursday, March 21, 2019. At the March 21, 2019 hearing, the parties, by stipulation of Counsel, agree Deed Book 43-G, Page 806; Deed Book 87-Z, Page 376; and Plat Book 72 at Pages 208-209 define the Easement that is the subject of this litigation.

II. Summary Judgment Standard.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.

Civ. P. 56(c); *Hedgepath v. Am. Tel & Tel. Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). Although the party moving for summary judgment “has the initial burden of demonstrating the absence of a genuine issue of material fact,” the moving party may discharge this initial responsibility “by pointing out to the trial court that there is an absence of evidence to support the nonmoving party’s case.” *Id.* A party opposing a motion for summary judgment must “come forward with specific facts showing that there is a genuine issue for trial” and “cannot simply rest on mere allegations or denials contained in the pleadings.” *Id.* “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Id.* at 355, 559 S.E.2d at 336.

III. Defendants’ Affidavit.

Rule 56 provides that “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” S.C.R. Civ. P. 56(e). Under the “sham affidavit” rule, this Court has the power to disregard some or all of a summary judgment affidavit “when it was submitted ‘to contradict that party’s own prior sworn statement’ in ‘an attempt to create a sham issue of material fact.’” *McMaster v. Dewitt*, 411 S.C. 134, 149, 767 S.E.2d 451, 456 (Ct. App. 2014). Additionally, “‘bald allegations’ are insufficient to create a genuine issue of fact.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 117, 410 S.E.2d 537, 546 (1991).

After careful consideration of the record in this case, the Court finds that Defendants’ joint affidavit is insufficient under Rule 56 and exercises its power to disregard the affidavit under the sham affidavit rule. For example, the statements in Defendants’ Affidavit that they realized that Plaintiffs allegedly might not be using the easement road as shown on the 1973 plat

when Defendants had architectural plans drawn for a riding ring are inconsistent with Mr. Norden's deposition testimony that he first learned Plaintiffs were allegedly using land not part of the easement in 2007 when Plaintiffs were planting. (See Affidavit of Defendants at pg. 2 vs. Depo R. Norden 13:1-10, May 15, 2015). Defendants' Affidavit also opines as to how the easement was used prior to their ownership of the property during a time when the Nordens did not live in South Carolina. Any such statements clearly are not based on personal knowledge as required by Rule 56 of the SCRCF. The Court, therefore, finds that Defendants' statements in the affidavit are inconsistent with the deposition testimony in the record and their pleadings and are not based on personal knowledge as required by Rule 56.

Based on the foregoing, the Court finds that the joint affidavit submitted in response to Plaintiffs' Motion for Summary Judgment consists of conclusory statements and irrelevant information and is, therefore, insufficient to create a genuine issue as to any material fact.

IV. Defendants' Counterclaim for Trespass.

Although Plaintiffs have an easement across Defendants' property, Defendants assert a claim for trespass because, according to them, the road that Plaintiffs have always used to access their property does not match the location of the easement as shown on a 1973 plat. (Answer to First Am. Compl. & Countercls. ¶¶ 29-31). According to Defendants, "Plaintiffs trespass on to and over the Defendants' property each and every time they access their property." (*Id.* ¶ 32).

"The language of an easement determines its extent. The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it. The intention of the parties must be determined by a fair interpretation of the grant or reserve creating the easement. 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. Coop., Inc., 404 S.C. 172, 179, 744 S.E.2d 580, 584-85 (Ct. App. 2013) (internal quotation marks & citations omitted), *reversed in part on other grounds by Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016). The express language in Plaintiffs' deed conveyed "an easement thirty (30') feet in width for egress and ingress from public roads to the property herein conveyed." (See Deed Book 43-G, Page 0806). When Plaintiffs purchased their property in 1975, the unpaved easement road from Gibson Road to Plaintiffs' property was already in existence, and it had been in the same location and had followed the same route for many years. (See Affidavit of Manning L. Williams and Affidavit of Eleanor C. Williams). This fact "demonstrates the easement holder and the landowners' understanding that such configuration did not exceed the intended scope of the easement." *Simmons*, 404 S.C. at 180, 744 S.E.2d at 585.

In order to establish a claim for trespass, a party must allege and prove the other party's "interference with 'one's right to the exclusive, peaceable possession of his property.'" *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013) (quoting *Ravan v. Greenville Cty.*, 315 S.C. 447, 463, 434 S.E.2d 296, 306 (Ct. App. 1993)). "For a trespass action to lie, the act must be affirmative, the invasion of land must be intentional, and the claimed harm must be the direct result of that invasion." *Santoro v. Schulthess*, 384 S.C. 250, 268, 681 S.E.2d 897, 906 (Ct. App. 2009). A claim for trespass is subject to the three-year statute of limitations of S.C. Code Ann. § 15-3-530(3). See *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355-59, 559 S.E.2d 327, 336-38 (Ct. App. 2001).

Based on the foregoing, Plaintiffs had a right to use the unpaved easement road from Gibson Road to Plaintiffs' property that had been in existence for over forty years at the time Defendants' purchased their property. Plaintiffs used the easement road as they understood it to

exist and never intended to deviate from the easement. Defendants' claim for trespass, therefore, fails as a matter of law. Moreover, Plaintiffs have been using the easement in question for over forty years after purchasing the property in 1975. Defendants bought the property subject to the easement in question in 2007, after Plaintiffs had already been using the easement for thirty-two years. Defendants waited seven more years after the purchase of the property and three years and six months after the filing of this complaint by Plaintiffs to assert any claims for trespass. Defendants' claims for trespass are, therefore, barred by the three-year statute of limitations.²

For these reasons, the Court finds that Plaintiffs are entitled to judgment in their favor as a matter of law on Defendants' counterclaim for trespass.

V. Defendants' Counterclaims for Private Nuisance.

Defendants have asserted a counterclaim for private nuisance based on the alleged conduct of third parties who are not parties to this litigation, in particular Plaintiff's adult son. (See Answer to First Am. Compl. & Countercls. ¶¶ 40, 41). Specifically, Defendants assert that "Plaintiffs regularly allow others to use the subject easement for hunting and other firearms practices." *Id.* Defendants, however, make no allegations that either Plaintiff has done anything to unreasonably interfere with Defendants' ownership or possession of their land nor do they make any allegations of any agency relationship between Plaintiffs and the alleged third parties.

"Nuisance is a substantial and unreasonable interference with the [landowner]'s use and enjoyment of his land." *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 413-14, 574

² Defendants make an alternative argument that their claim for trespass is subject to a ten-year statute of limitations under S.C. Code of Laws § 15-3-340, which provides that "[n]o action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the [claimant], his ancestor, predecessor, or grantor was seized or possessed of the premises in question within ten years before commencement of the action." Plaintiffs have been using the entire easement road, including any portion allegedly disputed by Defendants, since 1975. This Court finds neither Defendants, nor their predecessors in title, were seized or possessed of the allegedly disputed portion of the easement within ten years before Defendants brought their counterclaims; therefore, Defendants' claim for trespass is also barred by any potential ten-year statute of limitations.

S.E.2d 228, 231 (Ct. App. 2002). “[E]very annoyance or disturbance of a landowner from the use made of property by a neighbor does not constitute a nuisance.” *O’Cain v. O’Cain*, 322 S.C. 551, 561, 473 S.E.2d 460, 466 (Ct. App. 1996). A nuisance is “that class of wrongs that arises from the unreasonable, unwarrantable, or unlawful use by a person of his own property.” *Id.* “[T]he right to hunt and fish on one’s own premises is a right of property incident thereto which may even be granted or leased to others.” *Rice Hope Plantation v. S.C. Pub. Serv. Auth.*, 216 S.C. 500, 524, 59 S.E.2d 132, 142 (1950), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

The Court finds there is no evidence in the record to support Defendants’ claim of nuisance. Plaintiffs are entitled to summary judgment on this counterclaim because Defendants have identified no evidence that either Plaintiff has unreasonably interfered with Defendants’ ownership or possession or use and enjoyment of their property. The Court further finds Defendants failed to allege any sort of agency relationship between Plaintiffs and the third parties of whose conduct Defendants complain. Moreover, Defendants acknowledged that Plaintiffs and any invited guests of theirs can legally hunt on Plaintiffs’ property. (*See Depo. R. Norden 48:7 – 49:5 October 3, 2012*).

For the reasons stated above, Plaintiffs are entitled to judgment as a matter of law on Defendants’ counterclaim for private nuisance.

VI. Defendants’ Counterclaim for Interference with a Contractual Relationship.

Defendants’ final counterclaim for interference with a contractual relationship fails as a matter of law because the claim is untimely and the record is devoid of evidence to support all of the required elements of such a claim. To recover on a claim for tortious interference with contractual relations, Defendants must show the following: “1) the existence of a contract; 2)

knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages." *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). The statute of limitations for this claim is three years. S.C. Code Ann. § 15-3-530(5).

Defendants' sole allegation to support this claim is that they entered a listing contract with a real estate agent, from August 7, 2009 to October 4, 2009, to sell a portion of their property and that "Plaintiffs' son allegedly contacted the listing agent on or about August 19, 2009 and made threats or statements to the listing agents that [caused] the listing agent to cancel the listing contract and prevent a sale of the property." (See Answer to First Am. Compl. & Countercls. ¶¶ 46, 48; Ex. 13 to Mem. in Supp. of Pls.' Mot. for Summ. J. on Defs.' Countercls.). Defendants allege no conduct on the part of Plaintiffs and no agency relationship between Plaintiffs and their adult son. This claim is based on pure speculation and Defendants have not produced any evidence to support it despite having ample opportunity to do so. In any event, Defendants clearly knew of any potential claim when the conduct allegedly occurred in 2009, yet Defendants did not file a pleading asserting this claim until November 20, 2014, approximately five years later and well past the applicable three year statute of limitations.

Therefore, Defendants' counterclaim for tortious interference with a contractual relationship lacks evidentiary support and is barred by the statute of limitations, and Plaintiffs are entitled to judgment as a matter of law.

CONCLUSION

For all of the reasons stated above, Plaintiffs have established that there is no genuine issue of any fact material to Defendants' counterclaims, and Plaintiffs have an unrestricted right

to use the easement road over Defendants' property to access their property. Therefore, Plaintiffs' Motion for Summary Judgment is **GRANTED**.

The parties, by stipulation of Counsel, agree Deed Book 43-G, Page 806; Deed Book 87-Z, Page 376; and Plat Book 72 at Pages 208-209 define the Easement that is the subject of this litigation. Defendants' Motion to Reconsider is **DENIED**.

IT IS SO ORDERED THIS _____ DAY OF _____, 2019.

Honorable J. Derham Cole
Presiding Judge, Seventh Judicial Circuit

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Spartanburg Common Pleas

Case Caption: Manning L Williams , plaintiff, et al VS Cynthia W Norden ,
defendant, et al
Case Number: 2011CP4202079
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IT IS SO ORDERED!

s/J. Derham Cole 2053

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