

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BERKELEY COUNTY
COURT OF COMMON PLEAS

Dale E. Van Slambrook, Master-in-Equity

Case No. 2017-CP-08-1029

ALFRIGH G. WILLIAMS,

Respondent

v.

MYRA L. SCOTT,

Appellant.

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SC Court of Appeals

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES

- I. THE PRESIDING JUDGE ERRED IN CONCLUDING THAT THE APPELLANT IS BURDENED BY 20 FOOT EASEMENT, WHEN NO COMPETENT EVIDENCE ESTABLISHED THE DIMENSION OF SUCH EASEMENT

STATEMENT OF THE CASE

On May 18, 2004, the Appellant purchased a parcel of land known as Tract "A" as identified on a plat of "Tracts A and B" prepared by R.D. Guerry, R.L.S. dated July 17, 1970. After the purchase of the land, the Appellant installed a wooden privacy fence around her property and a gate on the south side of her property.

The Respondent acquired a parcel of land known as Tract "B" on the same plat and identified as 124 Psalms Lane, Berkeley County, South Carolina. The chain of title for the Respondent granted a perpetual free and unlimited right of access as a means of ingress and egress over the Appellant's property. The grant of easement did not provide the location or width.

On April 17, 2017, the Respondent filed a Complaint, which he alleged nuisance, continuing nuisance, negligence, injunction, and declaratory judgment. The Appellant filed an Answer on May 4, 2017, and she denied the allegations of the Respondent's Complaint.

A hearing was held before the Honorable Dale E. Van Slambrook on December 17, 2018. Judge Van Slambrook issued an Order on March 4, 2019, and he decreed that the Respondent is entitled to a 20 foot easement on the south side of the Appellant's property that is to extend from the front to the rear of the Appellant's property towards the Respondent's property.

On March 13, 2019, the Appellant filed a Motion for Reconsideration. The hearing for the Appellant's Motion for

Reconsideration occurred on April 3, 2019. Judge Van Slambrook denied the Appellant's Motion for Reconsideration per an Order dated April 4, 2019.

On April 5, 2019, the Appellant filed a Notice of Appeal as pertained to Judge Van Slambrook's Orders dated March 4, 2019 and April 4, 2019.

STANDARD OF REVIEW

"[T]he determination of the extent of a grant of an easement is an action in equity." Tupper v. Dorchester County, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997). "In appeal of an equitable action before a master authorized to enter final judgment, this Court must review the entire record and make its own findings of fact according to its view of the preponderance of the evidence." Judy v. Kennedy, 398 S.C. 471, 476, 728 S.E.2d 484, 486 (Ct. App. 2012).

FACTS

Lavenia Porcher and Chuck E. Williams conveyed a quit claim deed to Lavenia Porcher and Ray Williams on March 16, 1983, and the deed was recorded at the Berkeley County Clerk of Court on March 17, 1983 in Book A501 at page 205. The property is .55 acres and it is referred as Tract "B" as identified on a plat: "Tracts A and B" prepared by R.D. Guerry, R.L.S. dated July 17, 1970 and recorded in the RMC office of Berkeley County in Plat Book T at page 64. (Respondent's Trial Exhibit "1"). The address for the property is 124 Psalms Lane, Berkeley County, South Carolina. (Transcript p. 5, line 24- p. 6, line 5).

The quit claim deed included a provision as follows:

"A perpetual free and unlimited right of access to and from the lot therein 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 to the lot herein conveyed which said right-of-way shall be and remain appurtenant to the lot herein conveyed."

(Respondent's Trial Exhibit "1")

Lavenia Porcher and Ray Williams failed to pay the 2013 ad valorem property tax; therefore, on December 8, 2014, the Berkeley County Treasurer sold the property at a tax sale to the Ward Family Revocable Trust. The Ward Family Revocable Trust assigned the interest in the property to Glenn Ward. On January 5, 2016, Glenn Ward assigned the interest in the property to the Respondent. The tax deed was recorded at the Berkeley County ROD office on April 1, 2016 in Book 2143 at page 21. (Respondent's Trial Exhibit "1").

The Appellant purchased Tract "A" from the OHC Liquidation Trust as a successor to Oakwood Mobile Homes, Inc. on May 18, 2004. The deed was recorded at the Berkeley County ROD office on May 25, 2004 in Book 4015, page 61. (Respondent's Trial Exhibit "1").

In the early 2012, the Appellant erected a wooden privacy fence around her property and a gate on the south side of her property. (Transcript p. 30, lines 7-18. The Appellant installed the fence to protect her adult son who had been diagnosed with

schizophrenia with paranoia. (Transcript p. 66, lines 7-23).

The Appellant does not own the property between her house and Cainhoy Road, which is a main road. (Transcript p. 19, lines 10-19). Such property is owned by Seven Sticks, LLC. However, the Appellant has an easement from Seven Sticks, LLC, which allows her to reach her property from the highway. (Transcript p. 69, line 10- p. 70, line 20).

The Respondent contended that he could not get access to his property through the Appellant's property because of the wooden privacy fence and gate. (Transcript p. 9, lines 18-24). As a result, on April 17, 2017, the Respondent filed a Complaint, which he alleged nuisance, continuing nuisance, negligence, injunction, and declaratory judgment. (Respondent's Complaint). The Appellant filed an Answer on May 4, 2017, and she denied the allegations of the Respondent's Complaint. (Appellant's Answer).

A hearing was held before the Honorable Dale E. Van Slambrook on December 17, 2018.

The Appellant's witness, Dean Britt, a surveyor, testified that he had knowledge of the Berkeley County's requirements for plats and surveys. (Transcript p. 46, line 21- p. 47, line 1). Mr. Britt reviewed the deed that Respondent relied upon, and he concluded the deed did not specify the dimension of the easement or the location of the easement. (Transcript p. 48, line 23- p. 49, line 9; Transcript p. 59, line 23- p. 60, line 2).

Mr. Britt indicated the Respondent's property is .55 acres, and the Berkeley County ordinance required .6 acres for a minimum lot size for a single family dwelling. (Transcript p. 53, lines

14-20; Transcript p. 54, lines 17-23). He typically "install[s] 20-foot easements for pieces of property that meet the Berkeley County standards for dwellings." A 20-foot easement is required for multiple lots: (Transcript p. 55, lines 1-7). Mr. Britt testified that the Respondent's property "cannot be subdivided." (Transcript p. 55, lines 8-10). He recommended a twelve and a half feet easement across the Appellant's property. (Transcript p. 57, line 8-11).

Judge Van Slambrook stated in his Order dated March 4, 2019 in the Findings of Fact that Mr. Britt testified the width of an easement is typically not less than twenty feet wide. (Order dated March 4, 2019, p. 4). He further concluded that "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 be, at all points along its course a width of twenty (20') feet in order to be useful and serve its obvious intended purpose." (Order dated March 4, 2019, p. 6).

On March 13, 2019, the Appellant filed a Motion for Reconsideration. The hearing for the Appellant's Motion for Reconsideration occurred on April 3, 2019. Judge Van Slambrook denied the Appellant's Motion for Reconsideration per an Order dated April 4, 2019.

On April 5, 2019, the Appellant served her Notice of Appeal on the Respondent.

ARGUMENT AND AUTHORITY

THE PRESIDING JUDGE ERRED IN CONCLUDING THAT THE APPELLANT IS BURDENED BY 20 FOOT EASEMENT, WHEN NO COMPETENT EVIDENCE ESTABLISHED THE DIMENSION OF SUCH EASEMENT.

"In action for declaratory relief, the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence." Spur at Williams Brice Owners Association, Inc. v. Lalla, 415 S.C. 72, 82, 781 S.E.2d 115, 121 (Ct. App. 2015).

The Respondent sought a declaratory judgment concerning the right to use the easement across the Appellant's property; therefore, the holding in Lalla is applicable. (Respondent's Complaint).

"An easement is a right of use over another's property." Inlet Harbour v. S.C. Department of Parks, Recreation, and Tourism, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008). "The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonable necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated." Hill v. Carolina Power & Light Co., 204 S.C. 83, 96, 28 S.E.2d 545, 549 (1943).

The Appellant's witness, Dean Britt, testified the boundary

between the Appellant's house and the right side of her property is "approximately 20 feet plus or minus a foot or so."

(Transcript p. 52, lines 17-21). Mr. Britt reviewed the deed relied upon the Respondent, and he testified that the deed did not specify the dimension of the easement or the location of the easement. (Transcript p. 48, line 23- p. 49, line 9; p. 59, line 23- p. 60, line 2). Mr. Britt expressed that multiple lots require a 20' easement per the Berkeley County ordinance. (Transcript p. 55, lines 5-7).

The Respondent stated that he wanted to put a house on his property. (Transcript p. 11, lines 20-23). However, the Respondent did not testify about the size or shape of the easement that he sought to impose across the Appellant's property. He did not present any witnesses including officials from the Berkeley County Planning Department or Zoning Department regarding the required width for an easement for a single dwelling lot. Further, the Respondent did not express how wide the easement needed to be for access to and from his property. He did not provide any evidence concerning the required width of the easement on the Appellant's property.

Judge Van Slambrook held in his Order dated March 4, 2019 that the width of the easement shall be 20 foot on the Appellant's property. (Order p. 7). Such ruling will cause an unreasonable burden on the Appellant as the owner of the servient estate in contravention of Hill because the boundary between the Appellant's house and the right side of her property is

"approximately 20 feet plus or minus a foot or so." (Transcript p. 52, lines 17-21). As a result, the Appellant's house could suffer damages from equipment being transferred across the easement to the Respondent's property or automobiles travelling across the easement.

Further, the Respondent did not provide any competent evidence regarding the required size of a single family dwelling. The Respondent's property is .55 acres per the recorded plat book. (Transcript p. 53, line 17-20). Mr. Britt testified the Berkeley County ordinance required .6 acres for a single dwelling lot so a property that is .6 acres or less is limited to one dwelling. (Transcript p. 54, lines 17-23). Mr. Britt used 20 foot easement on "pieces of property that meet the Berkeley County standard for dwellings." (Transcript pp. 55, lines 1-4). The emphasis is "pieces of property", not a single lot, regarding the applicability of the Berkeley County standard for dwellings. A 20 foot easement is required for lots that can be subdivided. (Transcript p. 55, lines 5-10). As reflected in Mr. Britt's testimony, the Respondent's lot cannot be subdivided. (Transcript p. 55, lines 1-10). Consequently, the easement for the Respondent is not subject to the 20 foot easement. Mr. Britt recommended a twelve and a half feet easement across the Appellant's property. (Transcript p. 57, line 8-11). Such width for an easement is sufficient for a single dwelling lot and for access to and from the Respondent's property.

Judge Slambrook decreed in his Order dated March 4, 2019 under the Findings of Fact that the Appellant's witness, Dean

Britt, testified that the width of the easement is typically not less than twenty (20') foot wide. (Order p. 4, ¶15). Further, he stated that "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 p. 6, ¶20).

Judge Van Slambrook misconstrued the testimony of the Appellant's witness, Dean Britt, concerning the 20 foot easement being required. The Findings of Fact as enumerated in the Order is void of the intended obvious purpose of the easement. The Respondent did not present any evidence of the intended purpose of the easement except to say that he would like to put a house on his property. (Transcript p. 11, lines 20-23).

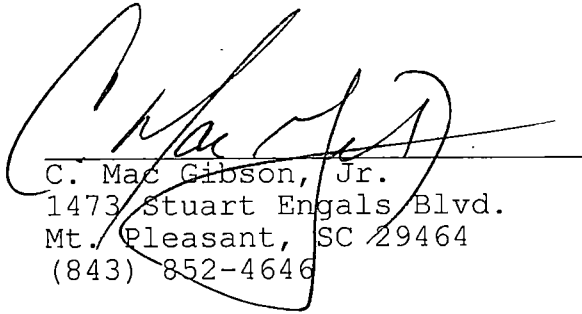
Moreover, the Respondent did not present any competent evidence that the Appellant's property is subject to a 20 foot easement. An easement for a single dwelling lot can be less than 20 foot, and such dimension would lessen the burden upon the Appellant as the owner of the servient estate per Hill.

CONCLUSION

Judge Van Slambrook erred in holding that the Appellant's property is subject to a 20 foot easement, when no competent evidence established the dimension of such easement; therefore, Judge Van Slambrook's Orders dated March 4, 2019 and April 4, 2019 should be reversed.

Respectfully submitted,

May 2, 2019



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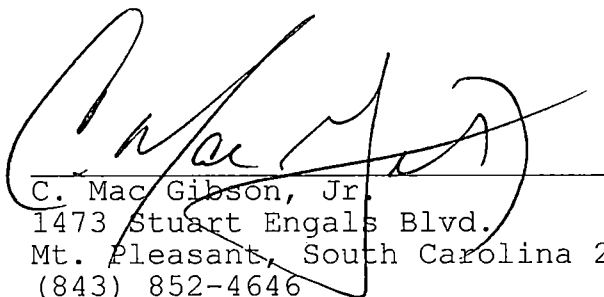
Appellant.

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PROOF OF SERVICE

I certify that I have served the Appellant Myra L. Scott's Initial Brief and Designation of Matter to be included in the Record on Appeal on Respondent Alfrigh G. Williams by depositing a copy of them in the United States Mail, postage prepaid, on May 2, 2019, addressed to his attorney of record, E. Mason West, Esquire, West Law Firm, LLC, 207 Carolina Avenue, Moncks Corner, SC 29461, on May 2, 2019.

May 2, 2019


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May 2, 2019

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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Re: Alfrigh G. Williams v. Myra L. Scott
Appellate Case No.: 2019-000588

Dear Mrs. Kitchings:

I have enclosed for filing an original and a copy of the following documents for the above-referenced appeal:

1. Appellant Myra L. Scott's Initial Brief;
2. Designation of Matter to Be Included in the Record on Appeal; and
3. Proof of Service.

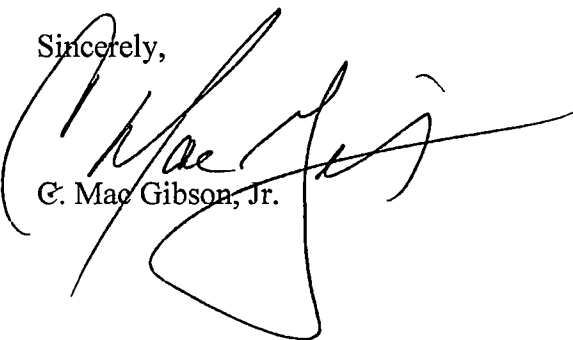
I would appreciate it if you would file the originals and stamp filed the copies and return the filed copies to me in the enclosed stamped self-addressed envelope.

By a copy of this letter, I am sending a copy of the referenced documents to the counsel of record.

If you have any questions concerning the enclosed documents, then please contact me.

With kind regards, I am

Sincerely,


C. Mac Gibson, Jr.

Enclosures (as stated)

cc: Client (w/ encls.)

E. Mason West, Esq. (encls)



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