

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Francis O. Johnson,)
)
 Plaintiff,)
)
 vs.)
)
 Mason C. Heyward, et al.,)
)
 vs.)
)
 Charleston County,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2008-CP-10-1054

FILED
 2019 JUN 13 PM 4:38
 JAMES J. ALMSTRONG
 CLERK OF COURT

**ORDER DENYING
 MOTION TO RECONSIDER,
 NEW TRIAL AND RULE 60 RELIEF**

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 SC Court of Appeals

This matter came before me on April 10, 2019, for a hearing on Heyward's motion to reconsider this court's order of June 30, 2015. This case involves the location and scope of a roadway known as Resurrection Road on Johns Island in Charleston County, South Carolina.

After hearing arguments from counsel for both Plaintiff and Defendants, I hereby deny Petitioner's motion to reconsider on the grounds that Defendant Heyward seeks a ruling on matters either already ruled upon, not tried or for an advisory ruling on matters not yet ripe for consideration by the court.

First, the court should note that the Motion to Alter and Amend Judgment, for a New Trial and for Relief from Judgment was timely filed on July 15, 2015. The court held a hearing on November 10, 2015 at which all parties were present. At the conclusion of the hearing, the court was informed the parties were working to resolve the issues involved with this easement dispute. Thereafter the parties were

unable to resolve their dispute; however, no notice of this breakdown was given the court until March 2019 when this matter was brought back before the court.^a

Notwithstanding this delay, the court addresses the issues as presented below:

1. The issue of the amount of compensation was clearly ruled on in Paragraphs 32 and 33 and in Conclusion #6 on pages 22-23.
2. While Heyward contends the County acquiesced in his position that the road had been abandoned, that issue was also clearly ruled upon in paragraphs 34-43 as the court found dedication and acceptance of the road.
3. At the outset of the case, the County moved to amend its pleadings to reflect this change and the case was tried on that basis; accordingly, I find the pleadings conformed to the proof at trial. Rule 15(b), SCRCP.
4. Heyward seeks the court's clarification on certain rulings; however, I find that the issue of who is going to make the desired improvements to the road was not an issue tried before this court and therefore not yet ripe for determination. The record clearly shows the county has accepted the road into its system by its continued use and maintenance.
5. Heyward seeks a "definitive ruling" on whether or not Resurrection Road is a public or private road. Again, this issue was clearly ruled upon as Heyward's 1996 plat dedicated his 25 foot right of way to the public. Furthermore the county has accepted the road into its road system as it has continued to maintain and scrape the road over the years.

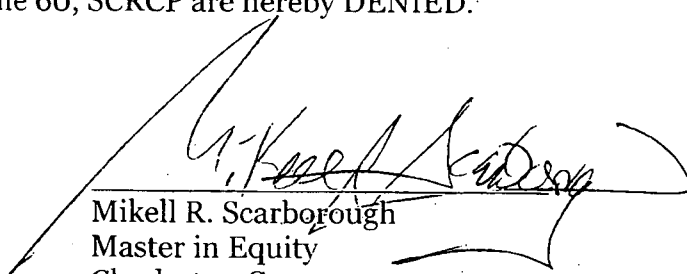
^a The court apologizes to the parties and their counsel for this long delay as it was under the impression the parties resolved their dilemma. Furthermore, Petitioner was to supplement the motion with a memorandum citing to the record in this case but this was never presented to the court.



6. On Heyward's argument that the court has "merged the easements," this court used its equitable powers to clarify the location and scope of the easement. The court is not allowed to alter or amend an express easement. If ultimately so determined, the court would rule the express easement should be added to the Prescriptive easement found to exist by the court.
7. Finally, Heyward contends the court erred "in both moving and expanding an existing prescriptive easement" and, apparently, in creating an express easement for the future use of the public and cites to Goodwin v. Johnson, 357 SC 49, 591 SE 2d 34 (SC App. 2003) for authority. This case presents the opposite corollary of Goodwin however, as here, the dedicated road was not used to the extent of the pre-existing easement. In its decree, this court sought to lessen the burden on Heyward by reducing the location of the express easement and moving it away from his home; however, if not agreeable to Heyward, the court finds that both the express and implied (prescriptive) easements should be allowed to stand with the result that a wider easement shall exist on Heyward lands.

For the reasons set forth, It IS HEREBY ORDERED and ADJUDGED that the Petitioner's motions for Reconsideration under Rule 52, New Trial per Rule 59 and Relief from the Judgement under Rule 60, SCRPC are hereby DENIED.

AND IT IS SO ORDERED!



Mikell R. Scarborough
Master in Equity
Charleston County

June 10, 2019
Charleston, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10-1054

FRANCIS O. JOHNSON,)
)
Plaintiff,)

vs.)

MASON C. HEYWARD, BERKELEY)
ELECTRIC COOPERATIVE, INC., and)
CLEMENTINE RAVENEL,)
)
Defendants.)

FILED
2015 JUN 30 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT

MASON C. HEYWARD,)
)
Crossclaim Plaintiff,)

vs.)

FRANCIS O. JOHNSON and)
CHARLESTON COUNTY, a political)
Subdivision of the State of South Carolina,)

Crossclaim Defendants,)

and)

RALPH L. HAYNES,)
)
Crossclaim Defendant and)
Counterclaimant.)

FINDINGS OF FACT AND ORDER

The within matter was originally commenced by the service and filing of a Summons and Complaint in the case of *Francis O. Johnson v. Mason C. Heyward, Berkeley Electric Cooperative, Inc., and Clementine Ravenel* seeking a declaratory judgment that Plaintiff has easements and roads

to his property by express grant, prescription, implication, estoppel, or otherwise (and) a decree setting forth the dimensions of said roads or easements. Those pleadings were dated and filed on February 25, 2008. Service of process was effected within days of the filing of same.

Responsive pleadings and extensive discovery processes were completed. By Consent Order of Reference of the Honorable Roger M. Young, dated December 9, 2008, the matter was referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, to direct entry of final judgment under Rule 53 of the SCRCF.

The matter was tried before this Court on January 19 and 20, 2010, and the parties presented voluminous testimony and exhibits.

On January 20, 2010, after due consideration of the testimony and the exhibits presented to the Court, I entered up preliminary findings of fact and rulings that included the following:

1. I found that the matter was an easement case and not a takings case and there was no constitutional question involved. I found that there was no governmental action involved.
2. I found that there was a prescriptive easement which had been in existence for many, many years and that it had been there as "the old road, a community road, Captain Bill's road" and that prescriptive easement or the road, was in existence "since dirt was new."
3. I found that the parties thereto and adjoining property owners had and continue to have the right to use that prescriptive easement from its originating point on its western boundary at what is now Betsy Kerrison Parkway along and through to its terminus to the east approximately 2,000 feet at a point slightly to the north of the northeast corner of the property of Louise Donny Bennett. I found that there was difficulty as to the extent of that easement as to its width at various points running from its beginning on Betsy Kerrison Parkway, along its length of some 2,000 feet to point

of termination. There is no question that there is a prescriptive easement along the whole length of what has been called or named "Resurrection Road."

4. I found that in addition to the prescriptive easement, there is an easement that was created in 1996 and it was dedicated to the County by the Defendant, Mason C. Heyward. That dedicated easement was intended for the use of the public.

5. I found that the dedicated easement was shown on a survey and plat by Lewis E. Seabrook dated January 18, 1996, revised February 27, 1996, and recorded on May 20, 1996 in Book G-269, page 298, and Plat Book DA, page 789, RMC Office for Charleston County.

6. That survey and plat was entitled "Johns Island, Charleston County, South Carolina, Plat of Subdivision of Lot J, Owned by Mason C. Heyward, into Lot J-1, Containing 1.30 Acres and an Approximately 5.0 Acre Residual Tract and a 0.51 Acre R/W."

7. The right of way is shown on that approved and recorded plat as "Resurrection Rd. 25' R/W" containing 25.24 feet in width at its beginning on Betsy Kerrison Parkway and running generally in a south, southeasterly direction—north $82^{\circ} 14 \text{ min. } 52 \text{ sec.}$ west, 891.13 feet to its termination on property of the Nautilus Group, shown as TMS No. 204-00-00-017, and at its terminus is shown to be 25.13 feet wide, all as is shown on the Final Approved Plat signed by the Clerk, Charleston County Council and the Director of Planning, Charleston county Planning Board, dated May 7, 1996 and designated as No. PP#16467. That right of way is also shown to contain 22,290 square feet.

8. An examination of that plat shows a broken and wavy line to north and parallel to the 25' Resurrection Rd. 25' R/W and at the point it intersects with the 25' R/W at its easternmost 298.80 portion it is identified as "Centerline Resurrection Rd."

9. In my ruling from the bench on January 20, 2010, I reserved the question as to whether or not the 25' R/W dedicated by the Seabrook survey and plat was abandoned by the County and I left open the question of abandonment because the County of Charleston was not at that date a party and I had not heard that the County had done anything during the thirteen or fourteen years that the dedicated easement had been in existence.

10. I ruled from the bench that the open questions unanswered on January 20, 2010, was the location of the easement and the extent of the easement—that is, exactly where it is ten feet, twelve feet, or fourteen feet wide and whether “you can couple it with the 25 feet that’s there” **and those decisions are within the equitable powers of this Court.** (emphasis added)

11. I found that in previous cases, the parties had the option of working out a location on their own and I strongly suggested that the ball was in the lawyers’ court to resolve something among themselves.

12. I even suggested that the agreement among the parties might entail payment of some money to get it and I suggested that something be worked out within 30 to 60 days.

13. All of this will appear by a transcript or “working copy” prepared by Bernadette A. Cali, CSR, which is made a part hereof by reference.

14. Though the Plaintiff (Johnson) holds out otherwise—that he had taken various proactive steps—and presented to the Court various surveys and plats commissioned from George A.Z. Johnson, Jr., Inc. attempting “to work something out”, nothing was accomplished and the matter dissolved into amended pleadings, added parties, crossclaims, motions, memoranda in support and in adverse to motions, depositions, and appearances before the Court.

15. The litigation and subsequent legal maneuverings resulted, in part, from the position of the County of Charleston “that the purported dedication (plat of 1996) was merely an offer to dedicate the property and that if, arguendo, there was a dedication, there was no acceptance of the property offered for dedication” and the entrance of Ralph L. Haynes, M.D. as a concerned property owner–Crossclaim Defendant and Counterclaimant–into the morass of claims, counterclaims, and crossclaims into which the litigation had descended.


16. Unfortunately, the parties did not take my suggestion of January 20, 2010 that they resolve something among themselves–that is to work something out–and the case was set for a day certain trial commencing on January 14, 15, 17, and 18, 2013. The trial of the matter commenced at 2:00 p.m. on Monday, January 14, 2013. The following appeared before the Court: Marvin I. Oberman, Esquire, representing Francis O. Johnson (Plaintiff) and Ralph L. Haynes (Cross-Claim Defendant and Counterclaimant). Francis O. Johnson appeared with Mr. Oberman and Dr. Haynes appeared through his deposition de bene esse, which the Court read in full; John Edward Robinson, Esquire, attorney for the Defendant and Cross-Claim Plaintiff, Mason C. Heyward, and his client, Mason C. Heyward; John B. Williams, Esquire, the attorney for the Defendant, Berkeley Electric Cooperative, Inc.; and Bradley A. Mitchell, Esquire, representing the Defendant, Charleston County.

17. Marvin I. Oberman, representing the Plaintiff, Francis O. Johnson, and Crossclaim Defendant and Counterclaimant, Ralph L. Haynes, entered, through testimony and exhibits, the following:

- A. As Exhibit “A”, the working copy of the Court’s findings of fact and rulings from the bench made on January 20, 2010

A handwritten signature in black ink, appearing to be 'MPS', located in the bottom right corner of the page.

B. The Consent Order of October 20, 2011 joining Ralph L. Haynes into the suit, individually

18. Mr. Oberman offered to read the de bene esse deposition of Ralph L. Haynes taken on November 26, 2012 and to resubmit the 18 exhibits attached to that deposition. The Court demurred as to the reading of the deposition into the record; took the deposition and 18 exhibits to chambers; and as promised, read that deposition as to the direct and cross-examinations in its entirety. The Court found, from the reading of that deposition, that Dr. Haynes was well informed and ^{he and his} ~~testimony were most impressive.~~ ^{Kwardedgardh} 

19. Steven J. Johnson was again qualified as an expert witness as to his skills and experience in surveying. As will appear by the transcript of "working copy" prepared by Bernadette A. Cali, CSR dated January 20, 2010 (Exhibit "A"), I stated there were open questions as to the location and the extent of the easement—that is, where it is, 10', 12', 14' wide, whether "you can couple it with the 25' that's there". Mr. Steven Johnson testified that he and his firm—George A.Z. Johnson, Jr., Inc.—had drawn a survey and plat showing the physical location of Resurrection Road and as per questions raised on January 20, 2010, had drawn a survey and plat showing in detail showing the physical location of Resurrection Road and, as per questions raised on January 20, 2010, that survey and plat showed in detail the various widths of the existing prescriptive dirt road known as Resurrection Road at approximately fifteen (15') foot intervals. It also showed the "existing 25' right of way" contained within the letters and line formed thereby A-B-C-D-A. That survey and plat showed that the existing 25' right of way ran generally to the south and parallel to the prescriptive dirt road known as Resurrection Road up to point H on the northernmost boundary line of the existing right of way, some 593.28' east of Betsy Kerrison Parkway. The existing dirt prescriptive

road at the point H intersected with the northern boundary line of the 25' easement and continued to run in an easterly direction from point H approximately 450' (within and threading that 25' dedicated easement) to line B-C (also shown as L3 on the plat), the easternmost terminus of that 25' right of way lies about midway from the northernmost boundary line of the property of Francis O. Johnson (204-00-00-014) and at the southwesterly corner of the property of Ralph L. Haynes (204-00-00-017).

20. That survey and plat was entered into evidence through Mr. Steven Johnson as Exhibit "1" and in board form as Exhibit "1-A" and it specifically references the "Plat by E.M. Seabrook, Jr., Inc., dated January 18, 1996, recorded in Plat Book DA, page 789, Planning Board No. 16467, RMC Office for Charleston County."

21. The referenced plat of E.M. Seabrook, Jr., Inc. dated/ revised February 27, 1996 was entered into evidence as Exhibit "2" and in board form as Exhibit "2-A" and shows "Plat of the Subdivision of Lot J, Owned by Mason C. Heyward Into Lot J-1, Containing 1.30 Acres and an Approximately 5.0 Acre Residual Tract and a 0.51 Acre Right of Way."

22. The plat, by Seabrook, on its face shows "Approved Final Plat" signed by the Clerk of Charleston County Council and the Director of Planning of Charleston County Planning Board and that approval was dated May 7, 1996 as No. PB 16467.

23. The coversheet—Charleston County Planning Department Subdivision Transmittal Coversheet showing meeting dates of the Planning Board on April 29, 1996 and the Public Works Committee on May 2, 1996 and County Council Meeting of May 7, 1996—outlines in detail the efforts of Mason C. Heyward and his surveyor—Lewis E. Seabrook, to secure the Resurrection Road 25' Right of Way through the Health Department, Public Works Department, and the Planning

Department. The Planning Department and Public Works Department had recommended disapproval and the Health Department had recommended approval. The exhibits submitted into evidence showed the Planning Staff and Public Works Department recommended disapproval; the Public Works Department had indicated the minimum width right of way necessary to construct a County standard road is 50' and that **"Resurrection Road serves as access to the approximately 25 acres of property with high developmental potential."** (emphasis added) The Minutes dated April 29, 1996 showed the actions taken as to File 16467; plans of Mason Heyward; that "Larry Kennerty explained to the Board that the Planning Staff and Public Works Department requested a 50' road right of way but the applicant will only give a 25' right of way." Mr. Kennerty informed the Board, "Mr. Heyward owns the entire 50' strip, but he is only willing to give us 25' of right of way. There are landlocked properties behind him, it is the County's obligation to provide access to those landlocked properties." Mr. Heyward stated **"If the people in the rear would like access to the property, let them pay him for the additional 25' of right of way."** (emphasis added) E.M. Seabrook, Jr. (the surveyor for Mr. Heyward) and by carbon copy, Mason Heyward were notified by letter of May 8, 1996, that "County Council at their meeting on May 7, 1996 **granted APPROVAL of a 25' road right of way being dedicated to the public** (emphasis added). Resurrection Road serves as access to approximately 25 acres of property with high developmental potential." That letter was signed by Beverly T. Craven, Clerk of Council and copies were sent to County Planning Department, Public Works Department, and Mason Heyward.

24. All parties and witnesses are in agreement that the westernmost portion of the existing 25' right of way (A-B-C-D-A) of approximately 240' (that is, the area between Betsy Kerrison Parkway and the westernmost boundary of the easement for the overhead utility line shown as

existing 75' power line easement, 37.5' each side per reference No. 2) is as a practical matter impassable because of grand trees and other topographic hindrances in that area.

25. The Plaintiff, Johnson, and Haynes submit that the area to the north of the dedicated easement and to the east of the 75' power line easement (referred to by Mr. Oberman as "the radish patch") can be used to expand the width of Resurrection Road to the desired and usable 25' width without in any way impacting practically on the home place property of Mason C. Heyward (204-00-00-133).

26. The attorney for Francis O. Johnson and Ralph L. Haynes and those individuals have respectfully requested that this Honorable Court exercise not only its legal powers but apply the maxims of equity with which it is empowered so that it will not suffer a wrong to be without a remedy Key Corporate Capital v. County of Beaufort, 360 S.C. 513, 519, 602 S.E.2d 104 (Ct. App. 2004) Lane v. New York Life Ins. Co., 147 S.C. 333, 369, 145 S.E. 196, 207 (1928); see also State ex rel. Daniel v. Strong, 185 S.C. 27, 43, [519*519] 192 S.E. 671, 678 (1937) ("[E]quity abhors a wrong without a remedy.") and require as done that which ought to be done in fairness and with conscience. Regions Bank v. Wingard 394 S.C. 241, 715 S.E.2d 348 (Ct.App. 2011). Those parties submit that equity would treat the subject matter, as to collateral consequences, and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been. The Court has the power to compel the parties to do that which ought to be done and which was contemplated by the parties at the time of the transaction. Kerr v. City of Columbia, 232 S.C. 405, 410, 102 S.E.2d 364 (1958). Equity imputes an intention to fulfill an obligation. Where

an obligation to perform an act rests on one with the means of performing, that person will be presumed to intend to perform through such means, and usually will not be permitted the contrary.¹

27. The within case pertains to and is limited to the area between Betsy Kerrison Parkway and line B-C as shown on the plat of George A.Z. Johnson, Jr., Inc., measuring from Betsy Kerrison Parkway to that line, 891' and does not impact upon the balance of the existing dirt road known as Resurrection Road to the east thereof to point M on that plat of Johnson.

28. Francis O. Johnson and Ralph L. Haynes submit that the only a portion of area of 1,733 square feet referred to the "radish patch" by Mr. Oberman; and the small area to the east of the 75' power line easement at point H would be all that is necessary to be given up by Mason C. Heyward and that the area within the 75' power line easement would allow the edge of the existing dirt road known as Resurrection Road to be expanded into an existing 25' right of way so as to impute the intention on the part of Mason C. Heyward to fulfill his obligation in dedicating a 25' easement of ingress/egress by his actions in 1996.

29. This Court has found that there is a prescriptive easement on the old community road and evidence has been presented of the 25' dedicated easement. Francis O. Johnson and Ralph L. Haynes submit to the Court their plan that does not unduly burden Defendant Heyward. In Goodwin v. Johnson, 357 S.C. 49, 591 S.E.2d 34 (Ct. App. 2003) the court states:

A court using its equity powers may relocate an easement when the relocation will not (a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and

¹Equitable Maxims were discussed in detail in The South Carolina Bar Continuing Legal Education Seminar of the 2011 Master-in-Equity Bench Bar of Friday, October 14, 2011, as will appear by reference to the printed text, which is made a part hereof by reference thereto.

enjoyment, or c) frustrate the purpose for which the easement was created. Restatement (Third) of Property: Servitudes § 4.8

Those parties proposed expansion of the prescriptive easement into or through the radish patch towards or to the 25' dedicated easement, moves the easement further away from Heyward's property and combines two divergent paths of travel into one. This seems to be the logical and equitable thing to do. Rather than necessitating Plaintiff and Dr. Haynes to remove trees and denude the landscape by cutting a new path within the 25' dedicated easement of the parties' proposal, with minimal change, charts a reasonable path. Heyward's sole argument is that this path will "frustrate the purpose for which the easement was created" and allow increased automobile traffic that will impact on his quality of life. Johnson and Haynes disagree. The proposal certainly carries out the intentions of Heyward's dedication while doing nothing to undermine the right of ingress and egress on the prescriptive easement. Heyward will not be inconvenienced nor his quality of life impacted by the movement of the easement boundary to the south and **away** from his property.

The purpose of the restatement rule is to allow development as long as it does not unduly interfere with the legitimate interests of the parties. See Generally, St. James Village, Inc. v. Cunningham, 210 P.3rd 190, 194-195 (2009) discussing Restatement (Third) of Prop: Servitudes § 4.8 cmt. f (2000). Heyward's argument that this change would unduly burden the easement is premature, and, contrary to the spirit of the Restatement rule in Goodwin.

30. Mr. Oberman refers to the area between the existing dirt road prescriptive easement and the "Existing 25' Right-of-Way" as the "radish patch" and it is said to contain approximately 1,773 square feet. That area is within the staff of the flag lot of Mason C. Heyward (TMS No. 204-00-00-133), to the south of property of Clementine Ravenel (TMS No. 204-00-00-019), and to the west of

the overhead utility line easement. That "radish patch" area is some two hundred fifty (250') feet to the east of the home lot of Mason C. Heyward and is isolated from his home by the utility easement and the prescriptive dirt road easement and only a proportionately small area of the "radish patch" would be necessary to even out and make consistent the southernmost boundary line of the existing prescriptive Resurrection Road easement.

31. The widening of the prescriptive dirt road easement to the south towards or into the Existing 25' Right-of-Way some four to five and one-half feet would have little to no detrimental effect on the value of the patch area to Mason C. Heyward. Mr. Heyward could even continue to cultivate his "radishes" or other plants on the remaining area. The Court could, however, in the exercise of equity, have an appraisal made of the effected area and award Mr. Heyward monetary compensation for the effected square footage.

COMPENSATION

32. The graveman or the basic gist of the claims of Mason C. Heyward and his almost herculean efforts to block the desired, required ingress/egress to the properties of Francis O. Johnson and Ralph L. Haynes was and is summed up in his desire for "compensation." As far back as April/May, 1996, as will appear in the Minutes dated April 29, 1996, Larry Kennerty informed the Board that "Mr. Heyward owns the entire 50' strip, but he is only willing to give us 25' of right of way to the landlocked properties behind him, it is the County's obligation to provide access to those landlocked properties." Mr. Heyward stated "**if the people in the rear would like access to the property, let them pay him for the additional 25' of right of way.**" (emphasis added) Mason C. Heyward testified under oath in his depositions and the two trials before this Court that he wanted compensation and that "if Mr. Johnson wants to develop it, if he wants to build houses in there-I

should be compensation for it.” Francis O. Johnson testified that Mason C. Heyward threatened to block ingress/egress to Johnson’s property unless he, Mason C. Heyward, was paid compensation. That he, Mason C. Heyward, first asked for the sum of \$10,000, which he then raised to \$50,000. It is to be noted that there was testimony that Mr. Heyward would alternatively take one or more of the subdivided lots as his compensation. It is to be further noted that Mr. Heyward demanded and received a check of \$600 dated April 30, 1999 for his grant of easement to William M. Kerrison, who at that time owned Parcel 16.

33. Though counsel for Mason C. Heyward has couched Heyward’s arguments proposing the ingress/egress easements on livability/environmental grounds, i.e., increased traffic on Resurrection Road, there has been no showing that Resurrection Road would be relocated closer to an area where the garage of Mr. Heyward is sited and that the grant of the 25’ Resurrection Road easement was given at the expressed request of Mr. Heyward and his surveyor to allow the construction of his approximate 12,000 square foot home in the subdivided Lot J-1, 1.3 acres, as a compromise and as access to the approximately 25 acres of other properties with high developmental potential to the perceived landlocked properties behind Mr. Heyward and that it was an obligation of the County to provide access to those landlocked properties.

THE POSITION OF THE COUNTY OF CHARLESTON

(Dedication and Acceptance)

34. The County of Charleston had previously taken a position “that the purported dedication (plat of 1996), was merely an offer to dedicate the property and that if, arguendo, there was a dedication; there was no acceptance of the property offered for dedication.”

35. Prior to the commencement of the trial on February 14, 2013, counsel for the County of Charleston and Marvin I. Oberman announced that Francis O. Johnson and Dr. Haynes had agreed to forego their cause of action of conspiracy against the County of Charleston and that the County agreed in exchange to forego its position as to the denial of the dedication and acceptance of the 25' easement.

36. The law as to a publically dedicated easement of ingress/egress is clearly set forth in the case of John M. Tupper, et al. v. Dorchester County (Dorchester County Council), et al., 326 S.C. 318, 487 S.E.2d 187 (1997) and in the cases as cited therein in which the Court takes up the essential elements of a publically dedicated easement. The case states in summary form that: "Two elements are required to perfect dedication." "First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use." Second, "and there must be some form of acceptance of the offer to dedicate." Helsel v. City of North Myrtle Beach, 307 S.C. 24, 413 S.E.2d 821 (1992). Dedication is an exceptional manner of passing an interest in land and proof thereof must be strict, cogent, and convincing. Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Ct.App. 1995). To have a completed dedication, there must be some form of acceptance of the offer to dedicate. Baugus v. Wessinger, 23 Am.Jur. 2d Dedication ¶42 at 38 (1983); Hodge v. Manning, 241 S.C. 142, 127 S.E.2d 341 (1962). **The use, repair, and working of the streets by public authorities is a mode of acceptance.** (emphasis added) Chapfee v. City of Aiken, 57 S.C. 507, 35 S.E.2d 800 (1900). The matter of dedication and acceptance was also taken up in the unpublished opinion of S.W. Youngblood v. County of Charleston, filed on November 2, 2006 and that unpublished opinion quoted the elements outlined in Tupper v. Dorchester County (citing Helsel v. City of North Myrtle Beach) and stated that the second element of perfecting a dedication, the

acceptance, must either be expressed or implied and the acceptance must be made within a reasonable amount of time. Helsel, 307 S.C. 27, 413 S.E.2d at 823 [citing Outlaw v. Moise, 322 S.C. 24, 30, 71 S.E.2d 509, 511 (1954)]. Acceptance may be inferred from the public's continuous use of the property or a public authority's maintenance of the property. Van Blarcum, 337 S.C. at 451, 523 S.E.2d at 489 (citing Tupper, 326 S.C. 326, 487 S.E.2d at 192).

37. In the case before this Court, there should be no doubt that the owner, Mason C. Heyward, expressed in a positive and unmistakable manner his intention to dedicate his property to public use. Mr. Heyward and his civil engineer and land surveyor, Lewis E. Seabrook, went through a series of steps and appearances before the Charleston County Planning Department, the Public Works Committee, the Health Department, and Charleston County Council to seek approval of a 0.51 acre right-of-way shown on the survey as "Resurrection Rd. 25' R/W 22,290 square feet" between Betsy Kerrison Parkway and terminating to the east on a line 25.13 feet in width (line BC on the Johnson survey). Those parties—Mr. Heyward and Mr. Seabrook—appeared before those various committees and council to argue for the 25' right-of way in lieu of a 50' right-of-way required at that time..

38. Based upon those active steps and plea of Mason C. Heyward and his engineer/surveyor, the County Council of Charleston, by its letter of Beverly T. Craven, Clerk of Council dated May 8, 1996, informed Mr. Seabrook, Mr. Mason Heyward, the County Planning Department, and Public Works Department that "County Council at their meeting on May 7, 1996 granted approval of a 25' road right of way to be dedicated to the public. Resurrection Road serves as access to approximately 25 acres of property with high developmental potential." These active steps by the owner, Mason Heyward, and his engineer/surveyor expressed in a positive and unmistakable manner the intention

to dedicate property of Heyward to public use. The survey and plat prepared at the request of Mr. Heyward and presented by Mr. Heyward and his surveyor to Charleston County Counsel was marked as an approved final plat on May 20, 1996. It was recorded in Plat Book DA, page 789, RMC Office for Charleston County and has remained as notice to the public since that date to the present.

39. To have a completed dedication, there must be some form of acceptance of the offer to dedicate. The letter of the Clerk of the Charleston County Council states clearly and explicitly that the "25' road right of way (is) being dedicated to the public."

40. James R. Neal, the Director of Public Works for the County of Charleston, testified that the County of Charleston has records of 34 years of continuous maintenance on Resurrection Road, including motor grader operators to maintain the road. The assigned motor grader operator would go down Betsy Kerrison to blade the roads to the one side, come back and blade the roads on the other side. If the operator needed dirt/fill or whatever, then a foreman would follow up with an inspection to see that he did it properly. Inspections and maintenance occurred on a monthly basis. Numerous exhibits were entered through Mr. Neal and they included a list of the county non-standard roads. Resurrection Road was shown on that list and it was noted—"approximate years maintained—34; it is in Council District 8; number of adjacent properties are 9. Travelway is 30'; no turn around at the end. No drainage. There are trees. The length in miles is .4." Mr. Neal agreed that the existing right-of-way had at least existed since August 16, 1982. Mr. Neal testified that a portion of the existing prescriptive right-of-way was within the boundaries of the dedicated 25' right-of-way and was regularly maintained by the County of Charleston.

41. Mr. Neal stated that he, as the Director of Public Works, sent a letter to all persons owning property joining Resurrection Road that stated in part as follows:



Our records reflect that you reside upon or along property adjoining a road formerly characterized as a community road. County records show that you have allowed lengthy public use of property for the above-referenced road; and the County has performed long-term, continuous maintenance of this road for 20 years or more. As a result of these actions, Council determined as of December 6, 2011 at a County Council meeting that Resurrection Road is a public road. In that regard, please consider the following:

1. The County believes that this road is a public road because you have allowed the public to use your property for over 20 years, and the County has no record of your refusing our maintenance and/or improvement efforts. The County is planning to improve this road's condition.
4. Unless you notify the County in writing at the above-listed address within 90 calendar days from the date of this date of letter that you disagree and/or oppose these actions, the County will proceed with this continued maintenance and improvements under its public roads maintenance system.

42. A like letter was sent to all property owners adjoining Resurrection Road and only Mason C. Heyward gave notice, through counsel, that he disagreed with the contents of the letter.

43. Counsel for the County of Charleston presented two long-term employees of the County—Mr. Raymond Robinson and Mr. Paul Porter—who testified that they maintained, repaired, and worked on Resurrection Road over a period of many years. These employees testified that they had on a regular basis graded portions of the road, that they had at times ordered fill, packed and leveled any developing potholes, **and that they had trimmed and cut back vegetative growth on either side of the travel path.** (emphasis added) Mr. Neal and these employees testified that a green Resurrection Road sign had been erected by the County, in place for many years, and was maintained by the County. The green color of the sign indicated that Resurrection Road was a public road as opposed to a blue sign which would indicate that it was a private road maintained by the



residents of that private road. The testimony and records of Mr. Neal and the testimony of the on-the-ground workers of the County of Charleston showed a continuing long-term repair and working of the road by the public authorities of the County of Charleston. Those actions and records, together with the correspondence to adjoining land owners, show a strict, cogent, and convincing dedication of Resurrection Road and the acceptance of that offer to dedicate that road as a public road.

THE AGREEMENT - DEDICATION

44. In the Spring of 1996, Mason C. Heyward sought to subdivide his parcel of property (TMS No. 204-00-00-018) comprised of 6.3 acres into a 1.30 home lot (TMS 204-00-00-133)—Lot J-1 and the residual—Lot J—5.0 acres. Mr. Heyward's unsubdivided parcel fronted to the west on Betsy Kerrison Parkway.

45. Mr. Heyward testified that he wished to replace his former home that had burned, but he never could or would explain the necessity that Lot J-1 (1.30 acres) be subdivided from the overall parcel of 6.30 acres nor why he could not have ingress/egress to Lot J-1 through and over his residual property directly from Betsy Kerrison Parkway.

46. Mr. Heyward testified that he was told that he would be required to dedicate a fifty (50') foot ingress/egress easement commencing at Betsy Kerrison Parkway and running in a generally westerly direction approximately 891.13 feet to provide a 50' roadway to the approximately 25 acres of property with high developmental potential.

47. Mr. Heyward and his surveyor/engineer, Mr. Seabrook, prevailed upon the various agencies of the County of Charleston and County Council of Charleston to allow, in lieu of the 50' easement, a 25' easement; those prayers were agreed upon and the prepared survey and plat was approved and recorded at the RMC Office for Charleston County.



48. Mr. Heyward, upon his request, was allowed approval of "a 25' road right-of-way being dedicated to the public" and it was again noted that Resurrection Road serves as access to approximately 25 acres of property with high developmental potential.

49. Mr. Heyward, based upon his agreement with the County of Charleston, built his home of approximately 11,500 to 12,000 square feet.

50. The County of Charleston as part of its agreement allowed the twenty-five (25') foot easement in lieu of the fifty (50') foot easement, then at that time required, and maintained Resurrection Road for the benefit of all landowners adjoining it and the citizens of Charleston County.

51. The Court has previously remarked, in paragraph 18 of these findings of fact that the witness, Dr. Haynes, was well informed and that he and his testimony were most impressive. The Court has taken the opportunity to re-read that de bene esse deposition.

52. The Court finds that the testimony elicited on the direct and cross-examinations form a summary—a framework of the essential facts and elements of this long and vigorously contested litigation.

53. The testimony of Ralph L. Haynes elicited by deposition at the Landstuhl Medical Center in Landstuhl, Germany shows, outlines, and ratifies in capsule form:

- (a) That he is the owner of land—Parcel No. 204-00-00-017—comprised of 12.8 acres lying some 891' to the east of Betsy Kerrison Parkway.
- (b) Dr. Haynes purchased the parcel April 22, 1999 by deed recorded May 5, 1999 in Book U-235, page 436, RMC Office for Charleston County.
- (c) Dr. Haynes was in possession of the Seabrook plat dated January 18, 1996, revised February 27, 1996, approved May 7, 1996, and recorded May 20,

1996, in Plat Book DA, page 789, RMC Office for Charleston County, in 1999 when he acquired parcel 17.

- (d) The property of Dr. Haynes makes up more than fifty (50%) percent of the "approximately 25 acres of property with high developmental potential" put forth by Mason C. Heyward and/or his supporters as a reason to allow him to grant a twenty-five (25') foot road right-of-way in lieu of the requested fifty (50') foot right-of-way. (See letter of approval of May 8, 1996 and agenda notes attached to County Council meeting of May 7, 1996).
- (e) The parcel of Dr. Haynes (17) together with the parcel of Francis O. Johnson (#14 - 5.3 acres) makes up 18.1 acres or 72.4% of the 25 acres of property with high developmental potential.
- (f) The Planning Board Minutes of April 29, 1996 show that Larry Kennerty informed the Board that "there are landlocked properties behind it. It is the County's obligation to provide access to these landlocked properties."
- (g) While under the previous ruling of this Court as to the prescriptive nature of the existing roadbed of Resurrection Road, Dr. Haynes would have access of as little as 12.1 feet wide, the property of Dr. Haynes and of Francis O. Johnson would be essentially landlocked for "high developmental potential" as submitted by Mr. Kennerty in support of Mr. Mason Heyward.
- (h) Ralph L. Haynes, M.D. testified "... in summary, I purchased that Parcel 17 over 15 years ago as an investment based on access to that property. It appears that Mason Heyward went before the County in 1996 and he and his surveyor-engineer did everything by proper procedure and dedicated 25-foot access easement to the public. I clearly would never have purchased a property had it been at risk of being landlocked. I noted in my original letter, which was an answer in October 8, 2010, that I vigorously opposed the abandonment of Resurrection Road by the County of Charleston. And noted that any proposed abandonment would markedly affect the value of my property and would make it essentially worthless as well as abrogating the right -- abrogating the right-of-way would disenfranchise those who were relying on such county road access. Also, the County of Charleston had accepted the dedication. The County had acquired a 25-foot right-of-way. The County had stamped the plat approved final plat, quote, unquote, which approval was assigned by Beverly Craven, Clerk of the County Council, and William Miller, Director of Planning in accordance with Exhibit 10, and recorded the plat in book BA, page 298, in the public records. Further, the County Council, by its letter of May 8, 1996, informed E.M. Seabrook, who was Mason's surveyor-engineer as well as the County Planning Department,

the Public Works Department, and Mason Heyward that the County, at their meeting on 7 May, 1996, had granted approval of a 25-foot road right-of-way -- I correct myself there -- dedicated to the public, and that Resurrection Road served as access to approximately 25 acres of property with high developmental potential. Again, those two sentences are clearly interconnected and related and refer to the same easement and event. So the County of Charleston had accepted the dedication by its actions as listed above and has further evidenced that acceptance by at least the following actions, and I have here a picture of the sign that the County has put up and maintained and that had been present for over 23 years, which is this sign."

54. This Court has given weight to the aforesaid testimony and exhibits of Ralph L. Haynes and has at the urging of counsel for Francis O. Johnson and Ralph L. Haynes given great weight to its legal powers and to its right and duty to apply the maxims of equity as referenced in paragraph 26 of its findings and therefore rules:

This Court, having reviewed the testimonies of the great number of witnesses and the voluminous items of evidence, including correspondence, surveys and plats, aerial and on the ground photographs, tax maps, minutes and other written documentation of the County of Charleston, pleadings and supporting affidavits of the parties and their supporting witnesses and after days of trial, enters its Order as follows:

FIRST: The Prescriptive Easement. The existing dirt road known as Resurrection Road as shown on the "Exhibit Showing the Physical Location of Resurrection Road Located on Johns Island, Charleston County, South Carolina" by George A.Z. Johnson, Jr., Inc. dated October 31, 2011, entered as Exhibits "1" and "1-A", in board form, is, as per my ruling from the bench, of January 20, 2010, a prescriptive easement and that the parties and adjoining property owners had and continue to have the right to use that prescriptive easement from its originating point on the western boundary at what is now Betsy Kerrison Parkway, along and through to its terminus to the east approximately



2,000 feet at a point slightly to the north of the northeast corner of the property shown as Parcel # 204-00-00-016—property of Louise Donny Bennett.

SECOND: George A.Z. Johnson, Jr., Inc. be retained at the expense of Francis O. Johnson and Ralph L. Haynes to redraw in two or more plats, in recordable form:


- (1) A survey and plat commencing at Betsy Kerrison Parkway and terminating and including the property of Francis O. Johnson to Line J-N (the easternmost boundary line of parcel 14) on the survey of October 31, 2011 with specific detail up to Line B-C on said plat, including the Existing 25' Right-of-Way (A, B, C, D, A)
- (2) A survey and plat showing the area from Line B-C (also shown as L3) to the point of termination at point M (1.0.5/8" Rebar).

THIRD: The southernmost boundary line between the Existing Dirt Road known as Resurrection Road be moved or relocated to the south between points A and H on the Johnson survey and plat so as to widen the prescriptive easement from the said point A to point H to a uniform width of twenty-five (25') feet.

FOURTH: From point H on the Johnson plat (the point of intersection of the existing dirt road with the existing 25' Right-of-Way) the existing dirt road be incorporated into and become a part of the easternmost 415.37' to Line B-C on the Johnson plat.

FIFTH: The movement or relocation of the southernmost boundary of the existing dirt road, as aforesaid, will create a viable, uniform right-of-way to Line B-C (line L2) on the plat of Johnson with a length of 891.13 feet and a uniform width of twenty-five (25') feet as contemplated by the actions of Mason C. Heyward and Charleston County Council, all as shown on the approved Final Plat recorded in Plat Book DA, page 789, RMC Office for Charleston County.

SIXTH: The area of the Existing 25' Right-of-Way to the west of point H on the Johnson survey and plat is impassable because of vegetative and topographical features and that area be used by the

referred


County of Charleston in its natural state as ~~a passive nature park~~ ^{to} or at the request of Mason C. Heyward ~~returned to him~~ ^{to} as the compensation for the portion of the "radish" patch used to create the uniform twenty-five (25') foot of the westernmost portion of Resurrection Road.

SEVENTH: The attorneys for the parties and the parties have presented to this Court countless items of testimony, exhibits, and written and verbal arguments. Days have been spent in trial, depositions, and pleadings. This Court has distilled the crux—the basic, central, or critical points—of the litigation before it. This whole matter boils down to two questions, that is:

- (1) What did the parties intend to accomplish by their actions taken in the Spring of the year, 1996?
- (2) Can this Court by the use and exercise of the broad powers of law and equity vested in it accomplish what the parties intended ~~to regard as done that which ought to be done~~ **to impute an intention to fulfill an obligation.**

The distillation of the facts of this case as to the intentions and actions of all parties in the Spring of 1996 show that:

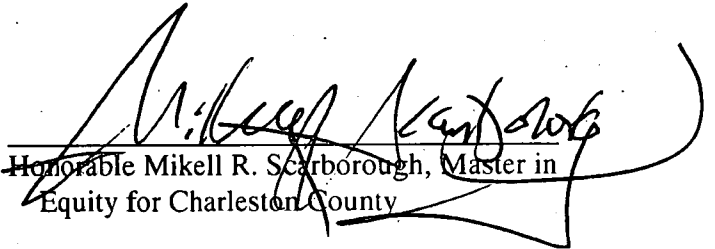
- A. Mason C. Heyward sought and achieved a boon—a favor given by Charleston County Council in answer to his request to allow a twenty-five (25') foot road right-of-way in lieu of the fifty (50') foot road right-of-way required at that time. Mr. Heyward requested that that right-of-way be twenty-five (25') feet in width and eight hundred ninety-one and 13/100 (891.13') feet in length and evidenced that right-of-way on a survey and plat recorded in the RMC Office for Charleston County.
- B. Charleston County, acting through its Planning, Public Works, Health Departments, and Charleston County council, after due consideration of the request of Mason C. Heyward and his surveyor/engineer, Lewis E. Seabrook, "granted APPROVAL of the 25' road right-of-way being dedicated to the public" and by its letter of approval noted that Resurrection Road serves as access to approximately 25 acres of property with high developmental potential. That recorded survey showed a right-of-way to be twenty-five (25') feet in width and eight hundred ninety-one and 13/100 (891.13') feet in length.
- C. Larry Kennerty (with the Planning and Administration section of the Planning Board) intended that the landlocked properties behind the properties of Mason C. Heyward

be given access and that it was the County's obligation to provide access to those landlocked properties.

AND IT IS FURTHER ORDERED THAT:

EIGHTH: Within forty-five (45) days subsequent to this Order becoming the Final Order of this Court, the George A.Z. Johnson, Inc. survey team draw, in recordable form, the two surveys and plats as outlined in paragraph Second, subparagraphs 1 and 2 of this Order.

AND IT IS SO ORDERED.


Honorable Mikell R. Scarborough, Master in
Equity for Charleston County

Charleston, South Carolina

6/30, 2015