

**THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

Perry M. Buckner, III, Circuit Court Judge

**Appellate Case No: 2018-001635
Civil Action No.: 2017-CP-07-02110**

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JUL 31 2019
SC Court of Appeals

Charles Willis Gardner.....Appellant,

vs.

Taylor Ruben Adams.....Respondent.

**FINAL BRIEF OF RESPONDENT,
TAYLOR RUBEN ADAMS**

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II. APPELLANT’S OWN DEED AND PLATS SHOW THAT HE DOES NOT OWN THE “DIRT ROAD.” OR THE PROPERTY SOUTHEAST OF THE DIRT ROAD.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE 1990 DECREE OF QUIET TITLE RULE THAT APPELLANT DID NOT OWN THE “DIRT ROAD” OR THE PROPERTY BELOW (SOUTHEAST) OF THE DIRT ROAD?
- II. DOES APPELLANTS OWN DEED AND PLATS SHOW THAT HE DOES NOT OWN THE “DIRT ROAD” OR THE PROPERTY BELOW (SOUTHEAST) OF THE DIRT ROAD?
- III. IS THERE ANY FACTUAL DISPUTE THAT RESPONDENT IS THE SUCCESSOR IN INTEREST TO JOHN HOWARD’S PROPERTY?

STATEMENT OF THE CASE

The Appellant and Respondent live on neighboring properties in Beaufort County. On October 12, 2017, the Appellant filed this lawsuit for trespass, conversion, and injunction against the Respondent. The Respondent filed a counterclaim for trespass and a violation of the South Carolina Frivolous Civil Procedures Sanction Act against the Appellant.

The Respondent filed a Motion on March 15, 2018 for Partial Summary Judgment seeking an Order vesting ownership of the “30-foot road and property to the south of the 30-foot road” in the Respondent. (Respondent’s Motion for Summary Judgment R. at 21)

The Motion for Partial Summary Judgment was heard by the Honorable Perry M. Buckner on June 26, 2018 in Beaufort County. On July 10, 2018 the Court ordered partial summary judgment for the Respondent vesting title in fee simple to a thirty (30) foot road, boat ramp and the +/- 1.054 acres below the dirt road in the Respondent and dismissing the Appellant’s trespass and other claims. The Order authorized Respondent

to pursue his counterclaims if he elected to. (Order Granting Partial Summary Judgment to Respondent, R. at 1). On July 20, 2018, the Appellant filed a Motion for Reconsideration. The Circuit Court denied this Motion on August 9, 2018. (Order Denying Appellant's Motion for Reconsideration, R. at 5). Appellant timely filed this appeal on September 6, 2018 of the Order Granting Partial Summary Judgment.

ARGUMENTS

SCOPE OF REVIEW

The scope of review of a declaratory judgment action will be considered one at law unless it be determined that the underlying purpose of the action set forth in the complaint is equitable. *Noisette v. Ismail*, 299 S.C. 243, 384 S.E. 2D 310 (Ct. App. 1989).

In this case, the parties demand damages for trespass. The scope of review in this case will be that of the review of a case at law. The findings of fact behind the Trial Judge will not be disturbed on appeal unless found to be without evidentiary support in the record. *Strickland v. Prudential Insurance RINS Co. of America*, 278 S.C. 82, 292 S.E. 2D 301 (1982).

The issue in this case is whether there are any disputed facts. The Appellant presented no affidavits or any other documents at the Summary Judgment hearing.

I. THE 1990 DECREE OF QUIET TITLE RULED THAT APPELLANT DID NOT OWN THE "DIRT ROAD" OR THE ACREAGE BELOW (SOUTHEAST) OF THE DIRT ROAD.

The Appellant has filed an action for trespass, conversion, and injunction against Respondent claiming that Respondent was trespassing on his real property. In order to prevail on any of those causes of action, Appellant must show that he owned the property at issue.

The Decree of Title Clearance by the Honorable Thomas Kemmerlin, Jr. dated November 20th, 1990 specifically states that Roy Gardner Sr., Appellant's predecessor in title, did not own the 30 foot dirt road or the 1.054 acres immediately below (southeast) of the 30 foot dirt road owned by Defendant, John Howard. Nowhere in the record did the Appellant attempt to present any type of factual evidence that he owned either the "dirt road" or the property below the dirt road. The Appellant was a defendant in the 1990 Quiet Title action. The 1990 Quiet Title action was resolved by settlement of all of the parties. Appellant's present action attempts

to repudiate his 1990 settlement agreement and the clear language of the 1990 Decree of Title Clearance.

II. APPELLANT'S OWN DEED AND PLATS SHOW THAT HE DOES NOT OWN THE "DIRT ROAD" OR THE PROPERTY SOUTHEAST OF THE DIRT ROAD.

At the Hearing on the Respondent's Motion for Summary Judgment, Respondent introduced the Deed into the Appellant from Leroy Gardner, Sr., and a number of Plats. Two of the referenced plats were done for the Appellant. In both of those plats, it is clear that the boundaries of Appellant's real property do not include the dirt road. Neither do the plats show the boat ramp to be within the boundary of Appellant's property. There is no material issue of fact as to the ownership of the road or the boat landing. They are not owned by the Appellant. If Appellant does not own the property, there can be no trespass.

III. RESPONDENT IS THE SUCCESSOR IN INTEREST TO THE REAL PROPERTY OWNED BY JOHN HOWARD.

The Decree of Quiet Title states that the road and the acreage southeast of the road is owned by John Howard. At the argument on the Summary Judgment Motion, the attorney for the Respondent clearly stated that Respondent was the Successor in Interest to John Howard. The court was entitled to take judicial notice of the Deeds in the Chain of Title. Appellants counsel did not make any objection or contest the assertion that Respondent was in the chain of title. In fact, Paragraph 5 of the Complaint specifically states that Respondent recently purchased property located on Warsaw Island Road in proximity to the property of the [Appellant].

The court is entitled to take judicial notice of deeds that are filed in the county where the court has jurisdiction. Courts will not confess to be more ignorant than the rest of mankind and should take notice of whatever is or ought to be generally known within the limits of their jurisdiction. *State v. Broad River Power Co.*, 177 S.C. 240, 180 S.E. 41 (1945).

Unless a fact is either of such common or general knowledge that it is accepted by the public without qualification or contention, or its accuracy is capable by verification by reference to readily available sources of indisputable reliability, it is not subject to judicial notice. *Moss v. Aetna Life Insurance Co.*, 267 S.C. 370, 228 S.E. 2D 108 (1976). Recorded deeds are readily available from the Beaufort County Register of Deeds, a source of indisputable reliability.

The use of judicial notice is set forth in Rule 201 of the South Carolina Rules of Evidence. A court may take judicial notice, whether requested to or not. In this case, the trial court was entitled to take judicial notice that the Respondent was a successor in interest to John Howard. This is the proper use of judicial notice of an adjudicative fact. There is no reasonable dispute that the Respondent was a successor

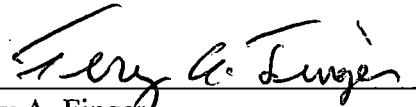
in interest to John Howard. Judicial notice may be taken at any stage of the proceeding.

CONCLUSION

Respondent asks that the judgment of the Circuit Court be affirmed.

July 29, 2019

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Respondent's Final Brief has been served on the Appellant and that the Respondent's Final Brief complies with Rule 211(b), S.C.A.C.R.

July 29, 2019

Respectfully submitted,

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