

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE RICHLAND COUNTY
COURT OF COMMON PLEAS

The Honorable Joseph M. Strickland, Master-in-Equity

Appellate Case No.: 2019-000569

Country Properties, LLC.....Appellant,

vs.

Nancy Dunn Martin.....Respondent.

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SC Court of Appeals

REPLY OF APPELLANT

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REPLY ARGUMENT

In the Final Order of September 27, 2016, the lower court found an easement in favor of Appellant Country Properties (hereinafter “Country Properties”) pursuant to three separate and distinct theories—express easement, public dedication, and prescriptive easement. (See Final Order R. p.4). Each of the three theories standing alone is sufficient to create a right in Country Properties across the lands of Respondent Nancy Dunn Martin (hereinafter “Respondent”). Respondent acknowledges this in her brief. (Respondent’s Brief, p. 1). Therefore, in order for this Court to affirm the lower court’s order granting a new trial pursuant to Rule 60(b)(2), Respondent was required to answer three essential questions: (1) How does the repair of a dam change the language of deeds creating an easement by express grant?; (2) How does the repair of a dam divest the public of a public road?; and (3) How does the repair of a dam change the finding of a prescriptive easement?

In both the lower court and in this Court, Respondent did not even attempt to answer the first two questions and thus failed to meet its burden of proof under Rule 60(b)(2), SCRPC and *Lanier v. Lanier*, 612 S.E.2d 456, 459, 364 S.C. 211 (2005)(“To obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence: (1) **will probably change the result if a new trial is granted**; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) **is material to the issue**; and (5) is not merely cumulative or impeaching.” (emphasis supplied)). The lower court, therefore, abused its discretion in granting a new trial. With regard to the third question, Respondent admits that “necessity” is not an element of a prescriptive easement, but the repair of the dam “shows a lack of full candor with the court.” Respondent’s Brief, p. 9. Respondent, however, provides no evidence of any lack of candor with the lower court and no evidence contradicting the trial testimony that the dam was

not in good repair at the time of trial. (Trial Transcript, pp. 352-361 R. pp.). In fact, Respondent originally brought her motion for a new trial pursuant to Rule 60(b)(3) alleging fraud, misrepresentation or other misconduct by Country Properties. Respondent did not prevail on that motion. Therefore, Respondent has not provided a sufficient answer to the third question.

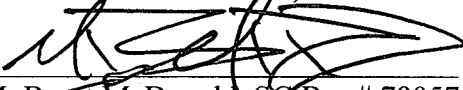
The failure by Respondent to provide a sufficient answer to even a single one of the three questions demonstrates an abuse of discretion by the lower court in granting a new trial because the real answer to the three questions is: "It does not."

CONCLUSION

For the reasons stated herein and in Appellant's Brief, the Order granting the Respondent's Rule 60(b), SCRC Motion for a New Trial should be reversed and the September 27, 2016 Final Order should be reinstated.

Respectfully Submitted,

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August 16, 2019

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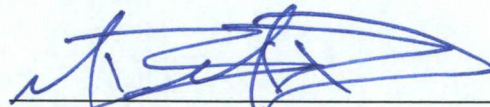
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CERTIFICATE OF COUNSEL

I certify that the Reply of Appellant Country Properties, LLC complies with Rule 211(b),
South Carolina Appellate Court Rules.



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