

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

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	i
ARGUMENT AND AUTHORITY.	1
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	1
CONCLUSION.	3

TABLE OF AUTHORITIES

<u>Crossman Communities of North Carolina v. Harleyville Insurance Company</u> , 411 S.C. 506, 769 S.E.2d 453 (Ct. App. 2015)	1
<u>Martin v. Cantrell</u> , 225 S.C. 140, 81 S.E.2d 37 (1954) .	1
<u>Snow v. Smith</u> , 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016)	1

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 a declaratory action, the plaintiff has the burden to prove the material allegations of his complaint by the greater weight or the preponderance of the testimony. Martin v. Cantrell, 225 S.C. 140, 81 S.E.2d 37 (1954) and Crossman Communities of North Carolina v. Harleyville Insurance Company, 411 S.C. 506, 769 S.E.2d 453 (Ct. App. 2015).

The Respondent filed a declaratory action for the rights and privileges to the easement across the Appellant's property. (Respondent's Complaint). As a result, the Respondent had the burden to prove the dimension of the easement per the Berkeley County Code and to prove the dimension of the easement would not interfere with the Appellant's enjoyment of her property.

The dimension of an easement is limited to the least restrictive use, and the owner of the easement only has the "rights incident or necessary to its proper enjoyment but nothing more." Snow v. Smith, 416 S.C. 72, 86, 784 S.E.2d 242, 249 (Ct. App. 2016). It is recognized that easement owner's rights are paramount to those of the landowner, however, such rights are not absolute, but limited. Id.

The Respondent misconstrued the testimony of the Appellant's witness, Dean Britt, in arguing that Mr. Britt concluded the

minimal width for a typical dwelling in Berkeley County is twenty feet. (Respondent's Brief, p. 6). The Respondent contended that Mr. Britt had to clarify that a 20 foot easement is typically required for multiple lots. (Respondent's Brief, p. 7). Such assertion is incorrect.

Mr. Britt testified that a twenty foot easement is required for pieces of property that meet the Berkeley County standards for dwellings. (R. p. 75, lines 1-4) (emphasis added).

Mr. Britt was consistent in stating that only multiple lots are subject to the twenty foot easement per the standards for Berkeley County. Mr. Britt testified about the width of easement per Berkeley County standard as follows:

BRITT: Berkeley County requires 30,000 square feet which is about three quarter's of an acre, .6, for a one-dwelling, unit for a well and septic tapping.

Q. So you only allow one dwelling?

BRITT. That's correct.

Q. For one dwelling how wide can an easement be? I'm talking about the minimal width.

BRITT. It could vary. Typically we put- we install 20-foot easements on pieces of property that meet the Berkeley County standards for dwellings.

Q. But 20 foot is typically required for what?

BRITT. For multiple lots for-

Q. And Tract B wouldn't qualify for multiple lots?

BRITT. Tract B cannot be subdivided.

(R. p. 75, line 17- p. 76, line 10).

The Respondent's property which is Tract B cannot be

subdivided because it is only .55 acres. (R. pp. 174-178). Per Mr. Britt's testimony, .60 acres are required for a single dwelling in accordance with the Berkeley County Code. (R. p. 75, lines 17-23).

The Respondent did not offer any evidence to show that Berkeley County Code required a twenty foot easement for a single dwelling. Instead, the Respondent artfully attempted to take Mr. Britt's testimony out of context to support the Order of the Honorable Dale Van Slambrook. (Respondent's Brief, pp. 6-8).

The Respondent argued in his brief without any support that there will be two families on his property. It is not known whether Berkeley County Code allows a house and a trailer on one lot. Further, the Respondent did not present any testimony or documents to prove that he can build a house per the Berkeley County Code. Instead, Respondent made unsubstantiated assertions including the need to have a twenty feet easement for equipment construction to reach his property. (Respondent's Brief, p. 7).

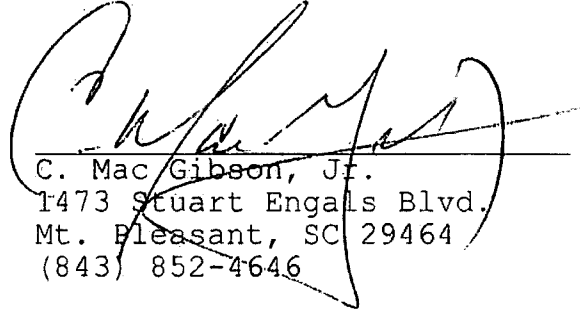
The corollary is the Respondent failed to meet his burden of proof on the basis that he did not present any competent evidence that Berkeley County Code requires a twenty foot easement for a single dwelling lot. As the Appellant's witness, Dean Britt, affirmably stated a twenty foot easement is required for multiple lots, not for a single dwelling. (R. p. 75, line 17- p. 76, line 10).

CONCLUSION

The Respondent failed to provide competent evidence to establish the dimension of such easement that being 20 foot

easement is applicable to the Appellant's property; therefore, Judge Van Slambrook's Orders dated March 4, 2019 and April 4, 2019 should be reversed.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'C. Mac Gibson, Jr.', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval shape.

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July 31, 2019

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