IN 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

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SC Court of Appeals

Case No. 2017-CP-08-1029
Appellate Case No. 2019-000588

ALFRIGH G. WILLIAMS, **Respondent,**

v.

MYRA L. SCOTT, **Appellant.**

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Did the presiding judge commit reversible error by specifying that an express easement for ingress and egress, which did not specify its width, is 20 feet wide?

STATEMENT OF THE CASE

Prior to the events at issue herein, Katie Drayton owned an approximately 1.47-acre parcel of real estate located in the Cainhoy area of Berkeley County, South Carolina. (R. p. 3) (*See* Final Order p. 3, ¶ 7; Plf. Ex. 1.) In 1970, Katie Drayton subdivided her land into two adjacent parcels—Tract A and Tract B. *See id.*

In 1980, Chuck E. Williams ("Chuck") and his grandmother acquired legal title to Tract B. (R. p. 3; R. p. 61, lines 23-25) (*See* Final Order ¶ 9; Transcript of Hearing, Dec. 17, 2018, p. 40, lines 23-25.[1]) In addition to the description of Tract B, the deed conveying title to Tract B also included the following language granting an express easement (the "Easement"):

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

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[1]References to the Transcript of Hearing in this matter will be cited as "Tr. page:line(s)," preceded by an abbreviation for the month of the hearing, so that the above citation would read "Dec. Tr. 40:23-25."

(R. p. 3; R. p. 175) (Final Order, p. 3 ¶ 9 & Plf. Ex. 1). Each successive deed in the chain of title for Tract B has incorporated this same language about the Easement. (R. p. 4) (*See* Final Order, p. 4 ¶ 10).

In 2004, Appellant Myra L. Scott ("Scott") acquired legal title to Tract A. (R. p. 3; R. pp. 166-173) (*See* Final Order ¶ 3 & Plf. Ex. 1). In early 2012, Scott erected a wooden privacy fence around Tract A (the "Fence"). (R. p. 51, lines 7-18) (*See* Dec. Tr. 30:7-18).

Although Chuck has continuously resided in a trailer located on Tract B since 1980, legal title to Tract B has changed hands multiple times since Chuck bought the land. (R. pp. 152-178) (*See* Initial Br. of Appellant ("Applt. Br.") pp. 2-3 (citing Plf. Ex. 1)). Most recently, in 2016, Respondent Alfrigh G. Williams ("Williams"), Chuck's brother, acquired legal title to Tract B. (R. p. 3; R. pp. 167-173) (*See* Final Order, p.3 ¶ 1 & Plf. Ex. 1).

Since acquiring title to Tract B, Williams had approached Scott multiple times about the Fence interfering and obstructing with the Easement but Scott has essentially ignored Williams' pleas. (R. p. 31, line 25- p. 32, line 19; R. p. 33, line 25- p.34, line 1) (*See* Dec. Tr. 10:25–11:19, 12:24–13:1).

On April 17, 2017, Williams filed the instant lawsuit against Scott alleging nuisance and negligence and seeking declaratory and injunctive relief. (R. pp. 14 -17) (*See generally* Compl.) On May 4, 2017, Scott filed an Answer in which she denied the substantive allegations of the Complaint, including the existence of the Easement, and asserted various affirmative defenses, including waiver and assumption of risk. (R. pp. 18 – 21) (*See generally* Answer).

On December 17, 2018, the Honorable Dale E. Van Slambrook presided over a bench trial in this matter. (R. p. 24, lines 14-17) (*See* Dec. Tr. 3:14-17). At the one-day trial, the trial court heard from a total of four witnesses—Williams, Scott, Chuck, and Scott's surveyor Dean Britt ("Britt"). (R. pp. 22 - 86) (*See generally* Dec. Tr.).

Williams testified that the Fence wholly obstructed his use and enjoyment of the Easement and that there was no practicable alternative access to and from Tract B. (R. p. 30, line 18- p. 31, line 18; p. 32, line 20-, p.34, line 4; p. 37, line 22- p. 39, line 12) (*See* Dec. Tr. 9:18–10:18, 11:20–13:4, 16:22–18:12). One of the main problems for Williams was that he wants to build a home on Tract B but cannot do so now because of the Fence. (R. p. 32, line 20 – p. 33, line 12) (*See* Dec. Tr. 11:20–12:12). Of particular concern was that emergency vehicles cannot readily gain access to Tract B due to the Fence. (R. p. 34, line 11 – p. 35, line 12) (*See* Dec. Tr. 13:11–14:12). Chuck testified that his family has historically used Tract A to access Tract B but that Scott's fence now precludes such access. (R. p. 62, line 1 – p. 63, line 20) (*See* Dec. Tr. 41:1–42:20).

Scott testified that the Fence was installed, with Chuck's permission, (R. p. 52, line 12-15) (*see* Dec. Tr. 31:12-15), for two reasons—(1) privacy, (R. p. 52, line 24, & p. 87, lines 5-6) (*see* Dec. Tr. 31:24 & 66:5-6), and (2) as a barrier for her schizophrenic adult son who resided on Tract A and was sometimes known to wander away, (R. p. 87, lines 7-23) (*see* Dec. Tr. 66:7-23). Britt testified that 20-foot-wide ingress/egress easements are typical in Berkeley County and are required for lots with multiple dwellings. (R. p. 76, line 1-7) (*See* Dec. Tr. 55:1-7). Here, because Tract B cannot be subdivided, Britt recommended that the

Easement be limited to 12.5 feet in width. (R. p. 78, lines 8-11; p. 91, lines 13-16) (*See Dec. Tr.* 57:8-11; *see also id.* 70:13-16) (Scott also requested that the Easement be 12.5 feet in width).

Immediately after the bench trial, the trial court issued a preliminary ruling from the bench. First, the trial court opined that there was no longer a dispute about the existence of the Easement over and across Tract A to provide ingress and egress for Tract B; the only remaining dispute was the location and width of that Easement. (R. p. 101, line 23- p. 102, line 9) (*See* Dec. Tr. 80:23–81:9). Second, the trial court opined that the Easement is located along the right-hand side of Tract A and is 20 feet in width (citing Britt's testimony). (R. p. 102, lines 9-11; p. 103, lines 11-18) (*See* Dec. Tr. 81:9-11, 82:11-18). Third, the trial court opined that the Fence can remain as long as Scott so desires, but Scott must provide Williams reasonable access through the Fence where the Easement is concerned. (R. p. 103, line 19 - p. 104, line 2) (*See* Dec. Tr. 82:19–83:2).

On March 4, 2019, the trial court's oral ruling, summarized above, was confirmed in the written Final Order. (R. pp. 6-7) (*See* Final Order, pp. 6-7). On March 13, 2019, Scott filed a Motion for Reconsideration. On April 3, 2019, the trial court held a hearing on that Motion. (R. pp. 109-124) (*See* Transcript of Hearing, Apr. 3, 2019 ("Apr. Tr.")). On April 4, 2019, the trial court entered an order denying the Motion. On April 5, 2019, Scott timely filed a Notice of Appeal.

STANDARD OF REVIEW

As previously summarized by this Court:

> "[T]he determination of the scope of the easement is a question in equity." *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) . . . . On appeal in an action in equity tried by the master, "the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence." *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004). Thus, this court may reverse a factual finding by the master in such cases when the appellant satisfies us the finding is against the greater weight of the evidence. *Id.* This broad scope of review does not require this court to disregard the findings of the master. *U.S. Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). Nor are we required to ignore the fact the master, who saw and heard the witnesses, was in a better position to evaluate their credibility. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000). Furthermore, the appellant is not relieved of the burden of convincing this court the master committed error in its findings. *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001).

Snow v. Smith, 416 S.C. 72, 84, 784 S.E.2d 242, 249 (Ct. App. 2016).

ARGUMENT

A Preponderance of the Evidence in This Case Supports a Finding That the Easement Is 20 Feet Wide

The sole disputed issue before the trial court was the width of the Easement.

> It is a well-settled rule of this state that when "a deed grants a right-of-way but does not fix its width, a determination of the width of the easement becomes a matter of construction of the instrument with strong consideration being given to what is reasonable, convenient and necessary to accomplish the purpose for which the right-of-way was created." *Moore v. Reynolds*, 285 S.C. 574, 578, 330 S.E.2d 542, 545 (Ct. App. 1985) [(citing, inter alia, *Patterson v. Duke Power Co.*, 256 S.C. 479, 183 S.E.2d 122 (1971))]. The rule set forth in *Moore* is consonant with the majority of cases examined in Annotation, *Width of Way Created by Express Grant, Reservation or Exception Not Specifying Width*, 28 A.L.R.2d 253 (1953).

Giles v. Parker, 304 S.C. 69, 73, 403 S.E.2d 130, 132 (Ct. App. 1991).

"A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Snow*, 416 S.C. at 84, 784 S.E.2d at 249 (internal quotation marks omitted). As is the case with the interpretation and construction of any instrument, "the intention of the parties must be the object of such inquiry." *Moore v. Reynolds*, 285 S.C. 574, 578, 330 S.E.2d 542, 545 (Ct. App. 1985). And the clearest intent of the parties is gleaned from the text of the granting document. *See Martin v. Bay*, 400 S.C. 140, 149, 732 S.E.2d 667, 672 (Ct. App. 2012).

In the instant case, the only guidance from the text of the deed is that the Easement was intended "as a means of ingress and egress . . . by means of a roadway." (R. p. 4 & p. 175) (Final Order, p. 3 ¶ 9 & Plf. Ex. 1). Obviously, given that the granting document does not specify the width of the Easement, the width of the Easement is ambiguous, thus allowing for the consideration of all surrounding circumstances in determining the parties' intent. *See Martin*, 400 S.C. at 149-50, 732 S.E.2d at 673. That said, the use of the term "roadway" is unambiguous, and contemplates ingress and egress over the Scott property according to those standards necessary for the ordinary enjoyment of any residential property, to include emergency services, police and fire protection, package delivery, and other incidents customary to today's standards of living.

Here, Britt testified that the width between Scott's house and her boundary line on the right side is "approximately 20 feet plus or minus a foot or so" "all the way from the front of [Tract A] all the way to the rear of her property towards Tract B," and, thus, would be an appropriate place to locate and accommodate the Easement. (R. p. 73, lines 5-24 & p. 74,

lines 6-10) (*See* Dec. Tr. 52:5-24 & 53:6-10; *see also id.* 59:15-19) (the Easement should be located on the right side of Scott's home); (R. p. 71, lines 8-14) (*Dec. Tr.* 50:8-14) (the left side of Scott's house only has a three-foot width and, thus, could not accommodate the Easement).

Moreover, when asked about the "minimal width" of a typical residential dwelling easement in Berkeley County, (R. p. 75, lines 17-25) (*see* Dec. Tr. 54:17-25), Britt responded "twenty feet," (R. p. 76, lines 1-4) (*see Dec. Tr.* 55:1-4). Indeed, Britt's testimony on this point was the basis for the trial court to rule that the Easement was 20 feet wide so as to provide for the normal comforts of residential property. (R. p. 6) (*See* Final Order, p. 6 ¶ 20) (holding that the Easement was and is 20 feet wide after "taking into consideration typical easements of Berkeley County as a guide"); (R. p. 121, line 10 -p. 122, line 13) (*accord* Apr. Tr. 13:10–14:13 (because the express grant was silent as to width, the grantor necessarily intended a "typical easement," which Britt testified was 20 feet).

Accordingly, Britt's testimony was sufficient evidence upon which to premise a determination of the width of the Easement. *See Marlow v. Marlow*, 284 S.C. 155, 161, 325 S.E.2d 703, 706-07 (Ct. App. 1984) (where express grant of easement was for ingress and egress, but failed to state the width of the easement, testimony that a 20-foot-wide road would accommodate two-way automobile traffic supported conclusion that such width would sufficiently provide reasonable ingress and egress); *see also May v. Miller*, 941 So. 2d 661, 671 (La. Ct. App. 2006) (evidence was sufficient to support finding that 20-foot width for an

easement was suitable for actual needs of dominant estate because a 20-foot width was sufficient to allow two cars to pass simultaneously).[2]

Admittedly, Britt sought to clarify that a 20-foot wide easement is typically required for "multiple lots," and noted that Tract B cannot be subdivided. (R. p. 76, lines 5-10) (*See* Dec. Tr. 55:5-10). Yet Williams testified that he plans to build a home on Tract B, (R. p. 32, lines 20-23 & p. 47, lines 12-15) (*see* Dec. Tr. 11:20-23 & 26:12-15), and to allow Chuck to continue living in the trailer currently thereon, (R. p. 34, lines 11-19 & p. 47, lines 9-11) (*see* Dec. Tr. 13:11-19 & 26:8-11). So even if Tract B would not be formally subdivided, as a practical matter, there would still be two families residing on Tract B, and thus multiple vehicles. Accordingly, in order to accommodate multiple vehicles on the Easement, as well as moving and construction equipment, it is reasonable to ensure that the Easement is at least 20 feet wide as is the case for multiple lots. (R. p. 6) (*See* Final Order, p. 6 ¶ 20 ("[A] fair and reasonable interpretation of the intent of the parties [in creating the Easement] is that it should . . . be useful and practical and serve its obvious intended purpose.").

In Scott's brief, she notes that Williams did not present any affirmative evidence about the width of the Easement that he sought. *See* Applt. Br. p. 7. Yet as explained immediately above, such evidence was presented primarily in Britt's testimony. (R. p. 75, line 18- p. 76-line 4) *(See* Dec. Tr. 54:18–55:1-4; Apr. Tr. 13:10–14:13). Furthermore, Williams testified that he intended to construct a home on Tract B and would continue to permit Chuck to reside in a trailer thereon. (R. p. 32, lines 20-23, p. 34, lines 11-15, p.47, lines 8 -15) (*See*

[2] Although not binding precedent, analogous cases from other jurisdictions may be persuasive. *See Bass v. Isochem*, 365 S.C. 454, 478, 617 S.E.2d 369, 381 (Ct. App. 2005).

Dec. Tr. 11:20-23, 13:11-13, 26:8-15). The vehicles and equipment needed in moving and constructing require a fairly wide berth, as will having multiple vehicles on Tract B on a regular basis.

Rather than the 20-foot width found by the trial court, Scott contends the Easement should be 12.5 feet in width. *See* Applt. Br. p. 8. Whereas the ruling for a 20-foot width is founded on Britt's testimony about a typical easement in Berkeley County, Scott's contention for a 12.5-foot width is solely founded on her unilateral desire for that width. Although Scott purports to ground her argument on another existing easement across another parcel, that easement is wholly irrelevant to the Easement at issue here. (R. p. 103, lines 1-5) (*See* Dec. Tr. 82:1-5). In any event, that other easement is for all intents and purposes 25 feet wide because it consists of an additional 12.5 feet of width on an adjoining parcel. (R. p. 76, line 11 – p. 77, line 10; p.122, line 14 – p. 123, line 1) (*See* Dec. Tr. 55:11–56:10; Apr. Tr. 14:14–15:1). Moreover, the grant of the Easement here clearly did not contemplate 12.5 feet on two separate properties but, rather, the Easement was to be "over and upon and across *the* adjacent *lot* delineated on said plat and *described as Tract 'A.'*" (R. p. 3) (Final Order, p. 3 ¶ 9 & Plf. Ex. 1) (emphasis added); s*ee Martin*, 400 S.C. at 149, 732 S.E.2d at 672 (the clearest intent of the parties is gleaned from the text of the granting document).

Scott also complains that a 20-foot wide easement will cause an unreasonable burden on her in that the Easement will then come within close proximity of the existing residence on Tract A. *See* Applt. Br. pp. 7-8. However, the Easement clearly contemplated "free and unlimited right of access" to and from Tract B across and over

Tract A, and a 20-foot wide berth is reasonably necessary to provide Tract B with the normal comforts of residential property. *See Marlow*, 284 S.C. at 161, 325 S.E.2d at 706-07; *May*, 941 So. 2d at 671. Moreover, Britt was specifically questioned whether the width between the house and the boundary line was large enough for an easement, and his response was undoubtably and plainly answered, "Yes." (R. p. 73, lines 22-24) (*See* Dec. Tr. 52:22-24).

In any event, the minimal amount of harm that might be done to Tract A by such access was readily foreseeable when Scott acquired Tract A given that the Easement was always on record. *See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) ("Property owners are charged with constructive notice of instruments recorded in their chain of title," including "whatever matters one would have learned by any inquiry which the recitals of the instrument made it one's duty to pursue." (emphasis, internal quotation marks, and footnotes omitted)). Additionally, Scott concedes the existence of the easement, and the fact that Williams is responsible for the maintenance and upkeep of the easement itself thereby eliminating any concerns about "wear and tear" to the property itself.

By contrast, if the Easement is unreasonably narrow, it would effectively preclude Williams from having reasonable access to Tract B, thus frustrating the very purpose of the Easement. *See Snow*, 416 S.C. at 86, 784 S.E.2d at 249 ("Although the rights of the easement owner are paramount to those of the landowner as to the easement, the easement owner's rights are not absolute but are limited, so both the owners of the easement and the

servient tenement may have reasonable enjoyment."). As previously mentioned, Williams intends to build a house on the property. The nature of the property itself and its current Berkeley County zoning restrictions, only lend itself to residential use. Williams testified that he also wishes to remove timber on the property. (R. p. 33, lines 7-9) (*See* Dec. Tr. 12:7-9). However, an easement of anything less than 20 feet would restrict the ability to transport the necessary heavy machinery in order to clear the land. In addition, Williams testified that emergency personnel cannot access the property currently. (R. p. 35, lines 1-2) (See Dec. Tr. 14:1-2). The inability to provide proper medical treatment in the event of an emergency, much less fire or police protection, would certainly frustrate the purpose of the easement itself.

However, if, in the course and scope of utilizing the Easement, Williams somehow damages Scott's home while traversing the Easement, then Williams will be liable to Scott for any damage proximately caused thereby. *See Jacob v. Bate*, 358 P.3d 346, 352 (¶ 15) (Utah Ct. App. 2015) ("The owner of property subject to an easement may recover damages if the use of the easement is so unreasonable in that it will unnecessarily damage the servient estate." (internal quotation marks omitted)).

Lastly, Scott argues that the trial court "misconstrued" Britt's testimony regarding the width of the Easement. *See* Applt. Br. pp. 8-9. Scott contends that "Britt recommended a twelve and a half feet [sic] easement," *id.* p. 8, and that a 20-foot easement was only typical for multiple lots, *id.* p. 9 ("An easement for a single dwelling lot can be less than 20 foot [sic]."). But, as previously noted, Britt also testified that a 20-foot wide easement was typical

in Berkeley County, (R. p. 75, line 18- p. 76, line 4; p. 121, line 23- p. 122, line 11) (*see* Dec. Tr. 54:18–55:1-4; Apr. Tr. 13:23–14:11). If and to the extent that Britt's testimony was conflicting in this regard, "[q]uestions regarding credibility and weight of the evidence are exclusively for the master." *Snow*, 416 S.C. at 88, 784 S.E.2d at 250 (internal quotation marks omitted).

CONCLUSION

In light of the foregoing arguments and authorities cited, especially considering that the trial court heard the live testimony in this case, a preponderance of the evidence supports the conclusion that the Easement has a 20-foot berth at all points along its course. WHEREFORE, the Respondent respectfully requests that this Court affirm the judgment below and grant the Respondent any other and further relief the Court deems just and equitable.

Respectfully submitted,

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