

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
BEAUFORT COUNTY,)
)
)
Plaintiff,)
)
vs.)
)
TIMOTHY A. SUMMERALL,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-07-00327

FINAL ORDER ENDING CASE

RECEIVED

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SC Court of Appeals

THIS NON-JURY MATTER came before me on March 19, 2019 for a final hearing on the merits with any appeal to the South Carolina Court of Appeals. Present on behalf of the Plaintiff was Thomas Keaveny, County Attorney, and Christopher L. Murphy, attorney for the Plaintiff. Present was the Defendant Timothy A. Summerall and his attorney, Terry A. Finger. Also present were various witnesses for the Parties.

BACKGROUND

The Plaintiff has claimed in this action that it owns a 50 foot road right of way, called Bostick Road. Defendant owns property adjacent to Bostick Road. Plaintiff alleges that Defendant has constructed a fence that crosses through the Bostick Road Right of Way. (Paragraph 9 of Complaint). Plaintiff seeks damages in Trespass and Private Nuisance and further seeks a mandatory injunction requiring Defendant to move the fence.

Defendant denied the fence encroachment and counterclaimed to quiet the title and the boundary to his Lot 1 in his favor. Defendant further sought an award of his reasonable attorney fees and costs.

Prior to the start of any testimony, the Plaintiff introduced Plaintiff's Exhibit 1 without objection. The parties stipulated that any handwritten notes on the plats were not official parts of the exhibits. This

Plaintiff composite exhibit had sub-exhibits A through M (containing plats and deeds). Additional exhibits were introduced during the course of the trial.

The Plaintiff called Josh Gruber, former County Attorney at the relevant time, David Gasque, Ziad Khalil, and Vicky Gault. Mr. Gasque and Mr. Kahlil are licensed surveyors and were qualified as experts. Vicky Gault was an expert title examiner. The attorney for the Defendant called David Youmans and Defendant as witnesses. Mr. Youmans and Defendant are also both licensed surveyors and were qualified as experts.

I have reviewed the pleadings, testimony, and exhibits, heard the arguments of counsel, and gauged the credibility of the witnesses. Based upon this review, I make the following

FINDINGS OF FACT

1. Defendant owns Lot 1 adjacent to Bostick Road as shown on Plaintiff's Exhibit 1A. This exhibit is a Plat dated September 15, 1965, recorded in Plat Book 15 at page 31 prepared by H.F. Wilson (hereinafter referred to as the Wilson Plat). For ease of reference, this Wilson Plat is attached.
2. The Wilson Plat established the subdivision where lot 1 is located.
3. The Wilson plat has a right angle where the western boundary of Lot 1 along Bostick Road intersects the northern boundary. It further shows a right angle along Bostick Road where Lot 15 will later be located by subdivision.
4. The Wilson Plat was the plat used in the first deed out from the common grantor to in initial owner of Lot 1 (Trask to Bell dated August 30. 1969 recorded in Deed Book 167 at page 1).
5. Subsequent deeds to Lot 1 in Defendant's chain of title used the Wilson Plat to describe the property.
6. The boundaries to Lot 1 were established before Block C (containing Lot 15- across Bostick Road from Lot 1) became platted and subdivided.

7. The subdivision Plat for Block C, Lot 15 is Plaintiff's Exhibit 1B. This plat was dated June 1966, recorded in Plat Book 15 at page 71 prepared by Roy Hussey (hereinafter referred to as the Hussey Plat). For ease of reference, this Hussey Plat is attached.
8. The Hussey plat was not correct as it showed the right angle on Lot 1 to be modified (see Finding of Fact 3 above). Any gain of property by newly platted lot 15 by this error in the Hussey Plat cannot come at the cost of property from Lot 1.
9. The error in the Hussey Plat was subsequently corrected by a plat dated August 1, 1967, recorded in Plat Book 17 at page 32 prepared by Niels Christensen (hereinafter referred to as the Christensen Plat). For ease of reference, this Christensen Plat is attached.
10. The Christensen Plat was used in property descriptions in deeds that were in the chain of title for Lot 15.
11. The Wilson Plat established the width of Bostick Road at 60 feet.
12. In 2005, the Trasks deeded Bostick Road to the Plaintiff, Beaufort County. This deed could not and did not alter the western boundary of Lot 1 along Bostick Road.
13. In 2011, Beaufort County agreed with Defendant's predecessor in title to narrow Bostick Road to 50 feet. Quit claim deeds were exchanged using a plat dated November 28, 2005 recorded in Plat Book 110 at page 42 prepared by David Gasque (hereinafter referred to as the 2005 Gasque Plat). Plaintiff's Exhibit 1D. For ease of reference, this 2005 Gasque Plat is attached.
14. The 2005 Gasque Plat had various areas labeled as "Areas of Confusion" and noted the "Survey does not match plat of recorded (SIC)" and "Phase Plats of Subdivision do not agree."
15. The 2005 Gasque Plat, as it states on its face, and the quit-claim deeds increased the confusion resulting from the incorrect Hussey Plat.
16. By agreeing to reduce the right of way to 50 feet, Beaufort County intended to add the reduced footage (10 feet) to Lot 1, now owned by Defendant.
17. Plaintiff's Exhibit 1M is a 2016 plat by David Gasque that shows the various property lines and references the various plats put into evidence (hereinafter the 2016 Gasque Plat). It further shows

the Hussey Plat mistake, corrected by the Christensen Plat. It further shows the professional opinions of David Youmans and Defendant as to the correct boundary line of Lot 1 along Bostick Road. For ease of reference, this 2016 Gasque Plat is attached.

18. The correct property line for Lot 1 owned by Defendant is labeled "Line as per Plat by David S. Youmans additional 10.0' being quit claimed."
19. Plaintiff's Exhibit 1J is a plat by David Youmans that properly shows the boundary of Defendant's Lot 1 with the 10 feet of the Bostick Road Right of Way added to its western boundary. For ease of reference, this Youmans Plat is attached.

Based upon these Findings of Fact, I make the following:

CONCLUSIONS OF LAW

1. The court has proper jurisdiction over the subject matter and parties.
2. At the conclusion of the Plaintiff's case, on the motion of the Defendant, I granted an involuntary non-suit on the Plaintiff's causes of action for trespass and private nuisance. This Order reaffirms that ruling.
3. The case is essentially a quiet title action to establish the western boundary of Lot 1 along Bostick Road.
4. The Hussey Plat had incorrectly moved and adjusted the Bostick Road lot line on Lot 1. A plat alone cannot convey property or move a previously established lot line on adjacent property. The Hussey Plat legally did not alter the Lot 1 boundary along Bostick Road.
5. Plaintiff failed to prove by the greater weight or preponderance of the evidence that it was entitled to prevail on its Complaint or that Defendant's fence was in the County owned Right of Way.
6. Defendant proved its case by the greater weight of the evidence and is entitled to prevail on his quiet title claim concerning the location of his boundary along Bostick Road.

7. I find and rule that Defendant's westerly boundary along Bostick Road is shown on Plaintiff's Exhibit 1M and it is labeled "Line as per plat by David S. Youmans additional 10.0' being quitclaimed." The boundary is further set out on Plaintiff's Exhibit 1J.
8. The Defendant's request for attorney fees is denied as there is no contract, statute, or common law theory that would authorized same.
9. Any Finding of Fact above that is also a Conclusion of Law is so adopted.

NOW THEREFORE, IT IS ORDERED:

1. The Plaintiff's Complaint is dismissed with prejudice;
2. Defendant's boundary of Lot 1 along Bostic Road is as set forth in Conclusion of Law number 6 above. A copy of Plaintiff's Exhibits 1M and 1J are attached to this Order for ease of any further title examinations.

AND IT IS SO ORDERED.

THE HONORABLE MARVIN H. DUKES, III
Master in Equity, Beaufort County, South Carolina

Beaufort, South Carolina
June _____, 2019.



FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-07-00327

BEAUFORT COUNTY
PLAINTIFF(S)

TIMOTHY A. SUMMERALL
DEFENDANT(S)

Submitted by: Terry A. Finger	Attorney for: <input type="radio"/> Plaintiff <input checked="" type="radio"/> Defendant
	<input type="radio"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL,

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

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SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:



Beaufort Common Pleas

Case Caption: Beaufort County VS Timothy A. Summerall

Case Number: 2017CP0700327

Type: Order/Form 4

So Ordered:

s/Marvin H. Dukes III #3069