STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Roy Anderson and Claudia Anderson, Plaintiffs, Vs Kenneth Ashely Wagster, Catherine Lee Connell, Todd W. Giles, Donald R. Owens and Pamela Cox aka Pamela Cox Owens, and Resource Financial Services, Inc. Defendants.	IN COURT OF COMMON PLEAS ELEVENTH LEXINGTON COUNTY Case No: 2016-CP-32-00877 **ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGEMENT**

This matter comes before the Court upon a Motion to Alter or Amend Judgment this Court's Order dated July 8, 2019. On July 18, 2019, Plaintiffs moved the Court to Alter or Amend its Order pursuant to Rule 59 (e) SCRCP. The Court scheduled for Plaintiffs' Motion on August 27, 2019 with all parties receiving proper prior notice. Based upon a review of the parties' well-articulated arguments and proposed Orders, for the reasons set forth below, the court respectfully denies Plaintiffs motion to reconsider.

FACTUAL AND PROCEDUAL BACKGROUND

Plaintiffs are the owner of an approximately 1-acre tract and residence thereon on Mineral Springs Road in Lexington County. Defendants own various tracts on Mineral Springs Lane, a private road serving a small County approved subdivision. Plaintiff alleged a right to establish and use an easement over Mineral Springs Lane based on a number of theories including easement

by dedication, easement by reservation, easement implied by map, and easement implied by prior use.

After a final hearing held on February 25, 2019, this Court issued an Order on July 8, 2019 denying Plaintiffs relief and holding that Plaintiffs have no right to access their property over and upon Mineral Springs Lane by easement.

GROUNDS FOR RELIEF AND ANALYSIS

Plaintiffs allege the following legal theories should require the Court to Alter or Amend its prior order:

EASEMENT BY RESERVATION:

Plaintiffs argue this Court should hold Plaintiffs have an easement by reservation using the legal analysis contained in *David R. Gooldy v. The Storage Center-Platt Springs, LLC,* 422 S.C. 332, 811 S.E.2d 779 (2018) and also *Blue Ridge Realty Company, Inc. and Clark L. Evans, Jr. v. Wendell McGregory Steacy Williamson and Enola Kathryn Williams*, 247 S.C. 112, 145 S.E.2d 922 (1965). Plaintiffs alleged that the 1993 deed and plat (Plt. Ex. 9, deed Book 2504 at 29) from Lille Corene Hook to her three (3) children reserved an easement to use an unpaved driveway to and from Minerals Springs Lane. The Plat, which referenced a right-of-way, identified a failed attempt in February of 1964 to dedicate property to Lexington County. It is important to note that the dedication did not occur and Lexington County did not accept the property as a public road. Plaintiffs argue that the certain rights created by the deed and plat in 1993 were reverted to Lille Corene Hooks and therefore her successors, the Plaintiffs.

The Court notes that there was no expert title information testimony, such as a qualified real estate attorney, surveyor, abstractor or title insurance attorney to offer an opinion as to the

practical or legal effect of the various deeds and plats. The only title evidence consisted of the actual recorded documents.

This Court notes that facts contained in *Gooldy v. The Storage Center* are not analogous and are wholly distinguishable from the facts in the present case. 422 S.C. 322, 811 S.E.2d 779. In *Goldy*, the facts clearly indicated that the road or right of way was shown on the incorporated plat in the initial deed and in subsequent deed(s) of record. There was also trial testimony about the specific use of the platted road or right of way.

Here, while there is indication of a path or encroachment over an extended period of time, this encroachment was never shown as a road or right of way. There was no substantive testimony any testimony about who used the path or encroachment prior to the initial deed out of the grantor. The use, which had to be included on the various plats because it was visible to surveyors, has to be, according to surveyor standards, noted. It was noted, but not as a road or right of way.

More importantly, there was not testimony about who was used the path or encroachment prior to the initial deed out. There are only certain classes, one the owner, a government or permitted use such as postal carrier or electrical or telephone right of way, or an adverse party. The record is silent as to who initially used the path or encroachment.

Defendant second argument that *Blue Ridge* controls is not persuasive. While there is language to support the argument that in some circumstances, a member of the public who has used an actual road on the ground that existed because of a failed dedication, there is a lack of evidence to indicate that anyone in defendant's chain of title (prior to later subdivision and recordation of private road agreement) used the platted non-accepted road running from the public road to the back of the property. Critically, there is no trial evidence to show any party used the portion of the failed dedicated road to access the disputed lot. The purpose of the non-accepted

road was to access the back lot properties, as can be inferred from the subsequent private road agreement.

Nor, as noted above, was there any expert opinion or testimony offered to state that the recordation of a failed dedication, with no actual use testimony, would under the facts of this case, created a right to use the road since no testimony that anyone prior to deed out in the disputed chain of tile, ever relied on the unaccepted plat.

As noted in the prior trial Order the prior grantor(s) of Defendant all testified that they used the disputed road by permission.

Simply put, the facts in *Blue Ridge* are also distinguishable from the facts in the present case. 247 S.C. 112, 145 S.E.2d 922. The road and/or property in *Blue Ridge* was accepted by the County and the dedication as a public road occurred. *Id.* at 120, 926. In the present case, an attempt was made in 1964 to dedicate a road to the County but an acceptance by the County never occurred. The facts in this case do not contain any property or a road that was dedicated and/or transferred to Lexington County as a public road. The 1993 conveyance to Lillie Corene Hooks includes a plat referencing the dedication attempt in 1964, however, the plat identifies something that in fact did not exist, therefore, nothing was capable of being reserved or reverting back in whole or in part to the property owner, her heirs, or successors. As a matter of public policy had the road or right of way been accepted by Lexington County and in fact dedicated for public use or had the evidence shown reliance and use, then an easement would survive for the reasons set forth in *Blue Ridge*. *Id.* at 121, 927. The trial evidence does not support evidence of any reliance or use.

EASEMENT BY PRIOR USE:

Plaintiffs argue the facts in *Caroline Boyd and The Caroline Collection, Inc. v. Bellsouth Telephone Telegraph Co, Inc.*, regarding the element of Necessity are similar to the facts in this

case. 369 S.C. 410, 633 S.E.2d 136 (2006). In *Boyd*, an antique business "Carolina Collection" sought an easement by prior use and equitable estoppel after a neighboring business Bellsouth installed a security fence that prevented Boyd from accessing the back entrance of her business. *Id.* at 414, 138. The South Carolina Supreme Court affirmed the Court of Appeals decision holding Carolina Collection's access to back entrance was necessary for the enjoyment of Boyd's property. *Id.* at 416, 139.

The necessity determination in in the *Boyd* case notes that Boyd's building had two entrances. The front entrance did not provide access to delivery of large items because the stairways and hallways were too narrow and evidence indicating providing an alternate would be infeasible, impractical and very costly.

In sharp contrast to those facts, the court notes here, that the Anderson property has two building on it. The primary building is a home that fronts on a public highway and is accessible. The second building is a shop used for non-residential or commercial use. Unlike the front entrance in Boyd where there was no access, here the testimony was that the access was inconvenient not non-existent like Boyd's front entrance. The Andersons testified that they could access it if you "jig and jag it and jaw it around." The Court's impression was that this description involved something similar to a three-point turn.

Plaintiffs allege the element of Necessity was met as Plaintiffs presented testimony that the volume of traffic was a concern. Again, there was no trial evidence indicating unusual Lexington County highway traffic volume, accidents, line of sight issues etc. This Court again rejects Plaintiff's

agreement for the reasons stated in the Court's Order dated July 3, 2019. Plaintiff's property fronts a considerable distance on Mineral Springs Road; there is no ditch or other natural impediment to prevent Plaintiffs from accessing their property.

CONCLUSION

Based upon the information presented to the Court, the grounds for relief raised by Plaintiff in their Motion and at the August 2, 2019 hearing were fully addressed in this Court's Order dated July 8, 2019. This Court is unable to discover any new material fact or principal of law that was overlooked or warrants further consideration.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Motion to Alter or Amend Judgment is hereby DENIED.

AND SO IT IS ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

Lexington Common Pleas

Case Caption:	Roy Anderson , plaintiff, et al VS Christopher C Boles , defendant, et al
Case Number:	2016CP3200877
Type:	Master/Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068