STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. No.: 2016-CP-32-0877
Roy Anderson and Claudia Anderson,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**ORDER**
	)	
Kenneth Ashley Wagster, Catherine Lee Connell, Todd W. Giles, Donald R. Owens and Pamela Cox a/k/a Pamela Cox Owens, and Resource Financial Services, Inc.,	)	
	)	
Defendants.	)	

INTRODUCTION:

The parties tried this contested easement case on February 25, 2019. Benjamin A. Dunn, II, Esq. represented Plaintiffs, Thomas D. Efland, Jr., Esq. represented Defendants Donald R. Owens, Pamela Cox Owens, and Todd W. Giles, and Brent M. Takach, Esq. represented Defendants Kenneth Ashley Wagster and Catherine Lee Connell. Defendant Resource Financial Services, Inc., did not make an appearance in this case. Based on the following facts and conclusions of law, this Court determines that Plaintiffs have not established the right to access their property over Mineral Springs Lane by means of an easement established by either dedication, reservation, prescription, easement implied by map, or easement implied by prior use.

FINDINGS OF FACT:

The Court has jurisdiction over the subject matter and parties because this case involves a dispute concerning real property located in Lexington County, South Carolina. The case was referred to the

Lexington County Master in Equity by Order of reference filed on August 2, 2017. The trial date set during a status conference held on September 6, 2018 and by Scheduling Order filed February 20, 2019.

UNDISPUTED FACTS

The Court notes that the parties stipulated to the various exhibits. No objection was made to the Plaintiff's son testifying about various documents he found doing public research at the Lexington ROD Office. It is noted that the parties did not offer this witness as an expert nor as giving a legal opinion. The court did not receive nor weigh his testimony in such fashion.

The chain of title to the properties owned by the Plaintiffs and all Defendants is essentially uncontested. Mineral Springs Lane is a privately maintained, unpaved road located close to the intersection of Leaphart Road and Mineral Springs Road near West Columbia. (Plt. Ex. 4; Plat Book 276 at Page 683) Approximately 20 feet wide, it begins at the right of way of Mineral Springs Road and runs south for about 1,600 feet over property owned by the Defendants and provides access from their properties to the publicly maintained Mineral Springs Road.

The Plaintiffs property, commonly identified as 4310 Mineral Springs Road, abuts Mineral Springs Road along its northern boundary and abuts Mineral Springs Lane along its western boundary.

Directly south of Plaintiffs' property is the lot owned by Defendants Donald R. Owens and Pamela Cox Owens, commonly identified as 121 Mineral Springs Lane. Mr. and Mrs. Owens' property may be described as a "flag-pole" lot which includes a 20-foot strip of land extending from the bulk of their property to Mineral Springs Road. (Plt. Ex. 13; Plat Book 11452 at Page 115) Mineral Springs Lane runs over this 20-foot "flag-pole" portion of the Owens' property and continues south along the western edge of their property.

To the south of the Owens' land is the property of Defendant Todd W. Giles, which is undeveloped and does not have a street address. Mineral Springs Lane occupies the western-most 20 feet of Mr. Giles' property.

The southernmost property is owned by Defendants Kenneth Ashley Wagster and Catherine Lee Connell and is commonly identified as 155 Mineral Springs Lane. Mineral Springs Lane runs along the western-most 20 feet of Mr. Wagster and Ms. Connell's property for approximately 300 feet where it terminates. Although Mineral Springs Lane abuts several lots on its western side, there is no claim that any of those properties seek to use it for access.

It is further uncontested that the properties which now belong to the Plaintiffs and all Defendants were originally part of a single tract conveyed to Lillie Corene Hook (hereinafter "Mrs. Hook") in 1940. (Plt. Ex. 5, Deed Book 5-F at 273) Mrs. Hook conveyed a one-half interest in the Plaintiffs' property to her husband, C.H. Hook, in 1961 (Plt. Ex. 6, Deed Book 10-Z at 547), but title returned to her when her husband died in 1986. (Plt. Ex. 7, C.H. Hook Estate, 86-ES-32-00228)

Mrs. Hook then conveyed the property now owned by the various Defendants to her three children, Barbara Hook Rolin, Carl Ronnie Hook, and Houston Donnie Hook, in 1993 while retaining title to the one acre constitutes the bulk of what is now the Plaintiffs' property. (Plt. Ex. 9, Deed Book 2504 at 29)

In June 1996, Mrs. Hook conveyed this property to Thomas and Sherri Osmer in June 1996. (Plt. Ex. 2, Deed Book 3784 at 137) At the same time, Mrs. Hook's three children conveyed a small, triangular 0.06-acre parcel to the Osmers to form the parcel now owned by the Plaintiffs. (Plt. Ex. 3, Deed Book 3784 at 132)

In July 1996, Carl Hook and Houston Hook conveyed their respective interests in the remaining property received from their mother to Barbara Hook who simultaneously conveyed this land to Preston F.

Bryant and Kay Amick Bryant. (Plt. Ex. 18, Deed Book 3810 at 66; Plt. Ex. 17, Deed Book 3810 at 71) In August 2005, the Bryants conveyed this property to Christopher C. Boles. (Plt. Ex. 15, Deed Book 10392 at 5) Both the deed from Barbara Hook to the Bryants (Plt. Ex. 17) and the deed from the Bryants to Christopher Boles (Plt. Ex. 15) referenced the survey recorded in Plat Book 209 at Page 1 (Plt. Ex. 16).

The parcels now owned by the Defendants all derive from Mr. Boles. He conveyed the property owned by Defendants Donald and Pamela Owens to Clifford F. Ray and Susan W. Ray in deeds recorded in November 2006 and April 2008 respectively. (Plt. Ex. 12, Deed Book 11524 at 176; Plt. Ex. 14, Deed Book 12822 at 97) Thereafter, Mr. Boles conveyed out the tracts which were ultimately purchased by Defendants Giles, Wagster, and Connell. (Trans., Christopher Boles, p. 105, The dispute at the heart of this case primarily, though not exclusively, involves the Plaintiffs and Defendants Donald R. Owens and Pamela Cox Owens.

Plaintiffs purchased the property at 4310 Mineral Springs Road from Thomas M. Osmer, Jr., and Sherri B. Osmer in September 2011. (Plt. Ex. 1; Deed Book 15043 at Page 141) Although Plaintiffs' property fronts on Mineral Springs Road and has a driveway onto Mineral Springs Road, Plaintiffs purchased the property with the intention of using Mineral Springs Lane to access the western side of the property, and in particular a building located behind the residence that had previously been used as a beauty shop in the 1960's and 1970's. (Trans., Roy Anderson, p. 18, ln. 21 - p. 19, ln. 8; p. 20, lns. 6-14; p. 26, lns. 1-17; p. 28, lns. 10-20)

Plaintiffs initially used Mineral Springs Lane to access their property, but in 2013 the Owens planted some shrubs along the edge of the roadway to block access. (Trans., Roy Anderson, p. 20, ln. 22 - p. 21, ln. 14) These died, so in 2015 the Owens had new plants and a fence installed to block Plaintiffs from using Mineral Springs Lane to access their property. (*Id.*; Trans. Donald Owens, p. 100, lns. 10 – 15)

The testimony of the parties as to the Plaintiffs' right to access their property from Mineral Springs Lane demonstrated that this issue is strongly contested. Plaintiff Roy Anderson views 4310 Mineral Springs Road as having a "circular drive" which accesses both the eastern side of his property from a driveway from Mineral Springs Road and the western side via Mineral Springs Lane. (Trans., Roy Anderson, p. 18, ln. 21 - p. 19, ln. 8; p. 20, ln. 25 - p. 21, ln. 14; p. 32, lns. 10 – 15) When asked if the eastern driveway leading from Mineral Springs Road provides access his carport, Roy Anderson replied: "Well, it does if you jig and jag it and jaw it around. You cannot make a turn to get into that carport from right here...." (Trans., Roy Anderson, p. 26, lns. 14 – 16) Plaintiffs' son, Bradley Anderson, also described the need to access 4310 Mineral Springs Road via Mineral Springs Lane:

> ... Well, the construction of the house is such that entrance into the carport is incredibly difficult from the eastern side entrance on Mineral Springs Road. Natural flow of the property, placement of the mailbox has historically been an ingress on what's now Mineral Springs Lane, circle around directly into the carport and assumption being naturally that you would back out of the carport and egress, or leave, on the eastern side of the property. Also the building in the back again was a business. Most of all the traffic would have come in on the western entrance and left that way. Also the carport on the side of the beauty shop and again the carport on the back of the main shop was a large entrance on the western side of the metal shop which would be accessed south of those two buildings off of the western entrance or Mineral Springs Lane. You can come in on the eastern side, but again, like my father said it's incredibly difficult to do any maneuvers into the carport from that location.

(Trans., Bradley Anderson, p. 41, ln. 11 - p. 42, ln. 8) Roy Anderson further testified he always believed he had the right to use Mineral Springs Lane for access because the property condition report he received from his predecessors in title, Thomas and Sherri Osmer, so stated. (Plt. Ex. 27, Property Disclosure; Trans., Roy Anderson, p. 18, lns. 10 – 16; p. 23, lns. 4 – 14) As noted above, the Osmers purchased the Plaintiffs' property from Mrs. Hook and her children in 1996 and lived there from that time until late 2010. (Plt. Ex. 2, Deed Book 3784 at Page 137; Trans., Thomas Osmer, p. 84, ln. 24 – p. 85, ln. 11) In his testimony, Mr. Osmer stated that during the time his family lived at 4310 Mineral Springs Road, they used Mineral Springs Lane to access their property most of the time. (Trans., Thomas Osmer, p. 86, lns. 6 – 14;

p. 88, ln. 22 – p. 89, ln. 2; p. 96, ln. 19 – p. 97, ln. 7) In fact, his mailbox was located along Mineral Springs Lane. (Trans., Thomas Osmer, p. 90, lns. 1 – 13) For this reason, he stated in the property disclosure provided to the Plaintiffs prior to their purchasing the property that "The drive on the south side of the property is shared with the landowners behind the property." (Plt. Ex. 27, Property Disclosure; Trans., Thomas Osmer, p. 86, ln. 15 – p. 87, ln. 8) Further, the Osmers contributed to the upkeep and maintenance of Mineral Springs Lane. In January 2010, the Osmers paid $1,545.00 to Charlie Price Paving Company, Inc., for work done on Mineral Springs Lane. (Plt. Ex. 28, Osmer Check No. 1136; Trans., Thomas Osmer, p. 87, ln. 9 – p. 88, ln. 7) In describing why this check was written, Mr. Osmer stated:

> To the best of my recollection Mr. Ray, he was the neighbor behind us, approached me one day and asked if I would be interested in maintaining that drive for him and I said, you know, sure we're using it so therefore I feel like I can do that and this was the result of that engagement.

(Trans., Thomas Osmer, p. 87, ln. 22 – p. 88, ln. 3)

The Defendants dispute Plaintiffs' right to use Mineral Springs Lane. Christopher Boles who, as explained above, is a predecessor in title to all Defendants, formally established Mineral Springs Lane as a privately maintained road with Lexington County. (Trans., Christopher Boles, p. 108, lns. 4 – 11) Mr. Boles testified that he was unaware of any recorded easement allowing Plaintiffs to use Mineral Springs Lane. (Trans., Christopher Boles, p. 107, lns. 6 - 9)

Boles admitted that the Osmers used Mineral Springs Lane to access 4310 Mineral Springs Road, but asserted this was with his permission and he did not intend to give permanent access rights. (Trans., Christopher Boles, p. 106, ln. 21 – p. 107, ln. 24)

In 2006, Mr. Boles conveyed the property which now belongs to Defendants Donald and Pamela Owens (121 Mineral Springs Lane) to Clifford and Susan Ray. (Plt. Exs. 10 & 12; Trans., Christopher Boles, p. 105, lns. 1 – 6)

Mr. Ray testified that prior to purchasing this property, he did a thorough title search to ensure there were no other easements affecting the access to this property and he found none. (Trans., Cliff Ray, p. 111, lns. 5 – 18)

He allowed the Osmers to use Mineral Springs Lane to access 4310 Mineral Springs Road but viewed this as a permissive use specific to the Osmers. (Trans., Cliff Ray, p. 112, lns. 4 – 13) Mr. Ray admitted he asked the Osmers to help pay for the maintenance of Mineral Springs Lane, but he did not consider this to constitute the grant of any permanent rights to use Mineral Springs Lane. (Trans., Cliff Ray, p. 112, ln. 20 – p. 113, ln. 13)

Defendants Todd Giles and Donald Owens likewise both testified that the title searches performed prior to their buying their respective properties revealed no easements allowing Plaintiffs to use Mineral Springs Lane. (Trans., Todd Giles, p. 116, lns. 2 – 10; Trans., Donald Owens, p. 118, lns. 7 – 13)

ISSUES:

The sole issue before this Court is if the Plaintiffs have the right to access their property via Mineral Springs Lane.

CONCLUSIONS OF LAW & DISCUSSION:

After considering the evidence and applicable law, this Court hereby makes the following determinations.

Nature of Action & Burden of Proof:

South Carolina law clearly states that actions to determine the existence of an easement

sound in law: "[T]he determination of the existence of an easement is a question of fact in a law action." *Jowers v. Hornsby*, 292 S.C. 549, 551, 357 S.E.2d 710, 711 (1987); *Tupper v. Dorchester Cty.*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997); *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005); *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006); *Bundy v. Shirley*, 412 S.C. 292, 302, 772 S.E.2d 163, 168 (2015).

But, the burden of proof required to show the existence of various kinds of easements is not as clear. The Supreme Court has stated: "[A] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." *Bundy v. Shirley*, 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015). Also, in *Boyd v. Hyatt*, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct.App.1988), the Court of Appeals held:

> However, absent an express grant, one who asserts a dedication must demonstrate conduct on the part of the landowner clearly, convincingly and unequivocally indicating the owner's intention to create a right in the public to use the property in question adversely to the owner.

Other than easements by prescription and dedication, South Carolina courts have not been as definitive in specifying the applicable burden of proof.

Creation of Easements:

In *Brasington v. Williams*, 143 S.C. 223; 141 S.E. 375 (1927), the Supreme Court noted:

> There seems to have been nine methods recognized under the common law for the creation of an easement, namely, by grant, estoppel, way of a necessity, implication, dedication, prescription, ancient window doctrine, reservation, or condemnation. *Id.* 141 S.E. at 382.

More recently, our courts have tended to describe three principal ways in which easements may be formed:

> "An easement may arise in three ways: (1) by grant; (2) from necessity; and (3) by prescription." *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct. App. 2012). Here, Shirley sought an easement by prescription. "A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner."

Boyd v. BellSouth Tel. Tel. Co., Inc., 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015). South Carolina courts have also recognized the creation of easements by implication: "[e]asements may be implied by

necessity, by prior use, from map or boundary references, or from a general plan." *Boyd v. Bellsouth Tel. Tel. Co., Inc.*, 369 S.C. 410; 633 S.E.2d 136, 139 (2006) (citing 25 Am.Jur.2d *Easements and Licenses* 20–22, 30, and Restatement (Third) Property: Servitudes §§ 2.11–.15 (2000 & Supp. 2006).

As noted. easements can be created several ways: (1) The owner can dedicate to County or the County or State can condemn property for a road (2) The owner can create an easement by grant, or deeding a declared easement (3) The owner can create an easement by plat (4) the user of the easement can by action, obtain an adverse or prescriptive easement or easement by prior use. Since the record evidence and the intent of the parties control as set forth in the legal discussion below, the critical dates and documents can be summarized as follows:

1. **August 24, 1961** Plt Ex. 8 Plat Book 59-G at page 239 1 acre Hook plat shows no driveway. This is the origin of the one acre tract as an independent parcel. The court notes that there is no driveway nor road shown as eastern boundary.
2. **January 18, 1964** Plt. Ex. 20 Plat Book 62-G at Page 140. Survey shows proposed county road. The disputed driveway is not shown on this plat
3. **February 19, 1964** Plt. Ex. 21 Deed Book 12-V at Page 171. This deed was attempted dedication of 40 foot proposed county road not proven to be dedicated to and accepted by Lexington County. Further, the deed notes that if the strip ceases to be used or maintained as a public road, then it reverts to Grantors their heirs and assigns.
4. **June 27, 1996** Plt Ex 2 Deed Book 3784 at Page 137. This deed is into Plaintiff's grantor and predecessor in title. Thomas and Sherri Osmer. The 0.83 and 0.06 tracts compose the Plaintiffs' property. June 27, 2996
5. **June 27, 1996** Plt. Ex. 4 Plat Book 276 at Page 683. The court notes that the property is bounded on the north by Mineral Springs Road, on the East by property n/f of Drafts , on the

West and South on un-subdivided property of Hook. It is noteworthy that there was no adjacent road existing or shown on the western side of the property conveyed to Osmer. This boundary was described as Now or Formerly of Lillie Corene Hook. Therefore, the line of cases discussed in the *Gooldy* case are inapplicable because in *Gooldy,* the controlling plat noted a 50 foot road running the length of the property. A designation of a road on a plat creates legal presumptions; the mere notation of an unpaved Driveway does not in and of itself create an easement since surveyors are bound to show any evidence of the ground of path ways, drives, or other encroachments.

6. **–January 24, 2011 Plt Ex. 27. Osmer Seller Disclosure Form 3 0f 4.** Plaintiff argues that this document indicates or creates a legal right to use the drive. This logic is faulty. First, this document is not from the original Owner. Osmer could not convey something he did not have. Osmer testified that he had only a transactional, monetary right to use the drive that the owners of the road that the encroaching driveway crossed allowed him. Osmer stated that he never thought he owned the right to the driveway or had a right other than the permissive right described above. Second, this document is not an attorney opinion or a title opinion or any other legal document that Plaintiff can relied on to legally establish a right to use the driveway. The court takes notice that these Seller disclosure forms are used , among other things, to put a buyer on notice of items the seller know that the proposed purchaser may not be able to discover by a simple record search, In this case, Number 19 was checked. 19 relates to ...easements... shared driveways or other encroachments from or on adjacent properties. The encroachment can go both ways. Osmer accurately note that "The drive .....is shared with the landowners behind the property." As Osmer testified, his right to share or use the property was permissive and paid for.

7. **April 11, 2008** Plat Book 12822 at page 99 shows subdivision plat of remainder of Hook property. It is important to note that this survey which is incorporated to the subsequent purchaser's deeds, does not show the disputed driveway easement. The Plaintiff cannot rely on this plat since it did not show any driveways encroachment. Nor are the purchasers who incorporated this plat in their deeds harmed by it since it does not show the driveway. The plat simply shows Osmer as adjacent owner and that the road to get to back lots is described as a 20 foot Privately Maintained Road.

Easement by Dedication:

Plaintiff's discussion about easement by dedication, while an accurate and detailed description of the applicable case findings are not controlling in this case because of the factual differences. In *Mack v. Edens*, 320 S.C. 236; 464 S.E.2d 124, 126 (Ct. App. 1995), the Court of Appeals explained the standard for determining if a property has been dedicated to the public:

> The determination of whether a roadway has been dedicated to the public is an action in equity. ... Dedication requires two elements. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. *Horry County v. Laychur*, 315 S.C. 364; 434 S.E.2d 259 (1993). Second, there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication. *Helsel v. City of North Myrtle Beach*, 307 S.C. 24; 413 S.E.2d 821 (1992).
> ...
> As with intention to dedicate, no formal acceptance by a public authority is necessary to show public acceptance. Acceptance may be implied by the public or a public authority continuously using or repairing the property. Also, acceptance and dedication may be demonstrated by a governmental authority not assessing taxes on the land. *Id.*

Applying this standard makes it clear that the attempted dedication by Mrs. Hook and Mrs. Lybrand in their 1964 deed (Plt. Ex. 21) failed. There is no evidence Lexington County ever maintained the 40' roadway or that it was removed from the tax rolls.

In addition to the conveyances described above, Mrs. Hook attempted to dedicate what would become Mineral Springs Lane to Lexington County. By deed recorded on February 27, 1964 Mrs. Hook and an adjacent landowner, Ollie Lorene Lybrand, conveyed a 40' strip of land to Lexington County for use as a county road. (Plt. Ex. 21, Deed Book 12-V at Page 171) The 40' proposed roadway was described by reference to a simultaneously recorded plat as being comprised of two adjacent 20' foot strips of land, one from "Parcel D" owned by Mrs. Hook (which occupies the land now comprising Mineral Springs Lane) and the other from "Parcel C" owned by Mrs. Lybrand. (Plt. Ex. 20, Plat Book 62-G at Page 140)

Critically to the court's analysis, there is no testimony from any Lexington County authorized witness nor any credible evidence of acceptance and or improvements or county actions on the road indicating a public dedication and acceptance. The 1964 deed was simply an unaccepted recorded offer to dedicate, with reverter language. There is no evidence to indicate this attempted road dedication was ever accepted by Lexington County. Further, no party made any real or signification argument that a dedication had occurred.

The court is not persuaded by Plaintiff's argument that failure to prove dedication ends the inquiry. In *Town of Kingstree v. Chapman*, 405 S.C. 282; 747 S.E.2d 494 (Ct. App. 2013), the Court of Appeals considered an attempt by the Town of Kingstree to close a portion of a road known as Porter Street. In evaluating the facts, the Court of Appeals determined Porter Street had never been successfully dedicated to the public:

> The Town did not present sufficient evidence for the special referee to find there was a dedication, either in 1903 or 1993. The plat from 1903 simply shows an opening between lots 13 and 14. It is not labeled. When the lots were sold in 1909, the deeds referred to that area as a new street. This was not sufficient to show the intent of John Nelson [who owned the property in the early 1900's] to dedicate the area. Further, the language in the 1993 easement was not sufficient to dedicate the land to the public. While it states that efforts should be made for the streets be open to the public, it only demonstrates Appellants and McIntosh were planning on doing that, not that they had accomplished it. Kellahan testified that McIntosh informed him when Appellants purchased the property that the road had not been dedicated. He further testified that when purchasing the property, a title search revealed no dedication, which is why

> Appellants requested the easement. Kellahan testified he did not know if Appellants received a separate tax notice for the area in question. Accordingly, the Town did not meet its burden of proof to establish a dedication.
>
> Additionally, the Town had to prove the area was accepted by the public. Kellahan testified Appellants had previously tried to dedicate the area in question to the Town but the Town would not accept it. He also testified the area Appellants purchased was used for agricultural purposes until a few years before the purchase and it was covered in weeds and broom straw. Kirby testified the area had never been developed as a road until the senior citizens housing was built and thus was never used for vehicular traffic. However, he also testified it was used as a dirt road entrance and exit one year for a "Pig Pickin" held at the recreation center. It was not used for that purpose in the following years due to citizens' complaints. Kirby also testified that prior to the recreation center being built, the road had two dirt lanes and one of those lanes was used to access a telephone substation. *Id.* 747 S.E.2d at 508.

Nevertheless, the Court of Appeals reversed the Special Referee's finding that the Town could close the road, because public dedication of Porter Street was irrelevant to the rights of the adjacent property owners:

> When John Nelson originally divided his property, **any landowner that purchased the property would have an easement regardless of whether or not the roads became public. Several cases explicitly state that the public easement or dedication does not extinguish the private easement**. Further, Appellants' easement from McIntosh stated it was for their use, not just the public's use. Therefore, regardless of whether the 1903 plat or Appellants' 1993 purchase of the easement from McIntosh was a dedication, they still had an easement. Accordingly, the special referee erred in finding the Town could close the road. *Id.* 747 S.E.2d at 508-9 (emphasis added).

As noted by the Court of Appeals, South Carolina courts have applied this same principle on other occasions. In *Newington Plantation Estates Ass'n v. Newington Plantation Estates*, 318 S.C. 362, 365; 458 S.E.2d 36, 38 (1995), the Supreme Court stated:

> While dedication for public use is significant to the creation of a public easement, it is irrelevant to the determination whether a private easement exists. ... Absent evidence of the seller's intent to the contrary, **a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use**. ... As between an owner who has conveyed lots according to a plat and the grantee, the dedication of a private easement is complete when the conveyance is made. (emphasis added)

And in *Van Blarcum v. City of N. Myrtle Beach*, 337 S.C. 446, 450; 523 S.E.2d 486, 488 (Ct. App. 1999), the Court of Appeals held:

A recorded plat may be sufficient to disclose a landowner's intent to dedicate property to public use. ... If a landowner subdivides and plats an area of land into lots and streets and then sells lots with reference to the plat, the owner manifests an intent to dedicate those common areas to be used by both the purchasers and the public, absent evidence of a contrary intent.

Again, while stating the correct law, Plaintiff misapplies fact application. In each of the existing cases above there was a road on the ground or a plat showing a road. As described above, none of the crucial deeds or plats show or designate a road that Plaintiff had an easement to use. The unpaved driveway designation on the Osmer plat is not legally equal to a fully described road designation on a plat incorporated into a deed.

Easement by Reservation:

Plaintiff incorrectly argues that the Hook attempt to dedicate the road as a public road created an easement for subsequent title holders. A close examination of both Exhibits 20 and 21 indicate as discussed above, that the deed was an offer that was not accepted by the County. The plat notes that the road is a 40' county road-20 feet from each side of proposed line. The road line was merely proposed and since never accepted, never came into existence. Further Plaintiff's Exhibit # 21 clearly states that if the 40 foot strip ceases to be used or maintained as a public road it shall revert to Grantors. It never became a road at that time, only a proposed road.

PRESCRIPTIVE EASEMENT

While the court again notes Plaintiff correct recitation of elements, the court again further notes that he facts indicate that neither Plaintiff nor his predecessor meet either the 20 year common law requirement nor(not argues nor proved, the 10 year statutory elements). Plaintiff bought the property in

2011. Plaintiff's predecessor specifically testified that he did not claim (so no hostile use/intent) an easement since his use was a transactional permissive use.

Further, while the tax maps came in as documents, the court views this tax map testimony and proposed conclusions skeptically. The court notes that tax maps have approximate lines; there was not business records custodian testimony indicating reliability of documents, unlike the plats and deeds which contained County stamped and page and date information

Easement Implied by Map:

Plaintiff has failed to establish an easement implied by map. As discussed above, the facts in this case are not similar to *Gooldy v Storage Center-Platt Springs, LLC 811 S.E. 2d 779 (2018)* or any of the other law cited by Plaintiff. Plaintiff's case law, presupposes (as did *Gooldy* facts and decision) that the subject property was bounded by a street or road. Here, the Osmer plat and deed did not show it being bounded by a street or road, merely a driveway encroachment running from the public Mineral Springs Road across property of Hook to Osmer lot.

The argument that the later, out of chain plat and documents starting with Plt. Ex. 11 et seq. similarly do not create the implication or intent that Osmer received an easement. Osmer's property clearly is shown on this subdivision plat. The driveway encroachment is not. The road to provide access to the back lots is clearly labeled 20' privately maintained road. By contrast the *Gooldy* plat was the plat into *Gooldy* (not later as here) and delineates the boundary as a 50 foot road. While the case law, as cited in *Gooldy* indicates, such action created the presumption that an easement was created, it can be rebutted. The clear evidence is that no party to the original transaction between Hook and Osmer, or Osmer and other back lot Owners ever thought or intended that this road would provide access to Osmer or Plaintiff. Plaintiff who obtained the property in 2011 is the only party to make such claim.

Easement Implied by Prior Use:

In order to demonstrate an easement by prior use:

> The party asserting the right to an easement implied by prior use must establish the following: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title.

Boyd v. Bellsouth Tel. Tel. Co., Inc., 369 S.C. 410; 633 S.E.2d 136, 139 (2006).

The facts of the case do not show there is a factual or legal necessity as the party asserting the right of an Easement by Necessity must demonstrate: 1) Unity of title, 2) Severance of title and 3) Necessity. *Kennedy v. Bendenbaugh*, 352 SC 56, 60, 572 S.E. 2d 452, 454 (2002).

The Court rejects Plaintiff's argument of Necessity because even though the property did have Unity of title and Severance, it fronts for a considerable distance on Mineral Springs Road and has a driveway thereon as viewed on the various plats of the property and various pictures admitted into evidence and further as testified to by witnesses.

The court notes that as one witness stated, traffic observations are subjective. The court further notes that there was no evidence such as FOI requests showing volume of traffic or accidents during times, relevant police reports of unsafe traffic flow or patterns, only the testimony that is was basically easier to cross into Plaintiffs home where the encroachment exists. The court notes that the property has 160 plus feet of road frontage on Mineral Springs, there is no ditch or other natural impediment to Plaintiff relocating the entrance of the circular drive from Mineral Springs across his lot rather than his neighbors. Finally, there is ample room to enter and leave the property through the other side of the lot. It just requires, as was testified, the inconvenience of backing up or other maneuvering.

CONCLUSION:

After considering the evidence and applicable case law, the court finds Plaintiffs failed to prove that the unpaved driveway is an easement by any tried and argued theory of dedication, reservation, prescription, implication by map, and implication by prior use over and across Mineral Springs Lane to access their property located at 4310 Mineral Springs Road.

Wherefore, it is Ordered and adjudged that Plaintiffs have no right to access their property over and upon Mineral Springs Lane by means of an easement by dedication, reservation, prescription, easement implied by map, or easement implied by prior use.

James O. Spence
Master-in-Equity

Signature Page to follow

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP3200877

Roy Anderson	Claudia Anderson	Catherine Lee Connell Donald R Owens Pamela Cox Owens Kenneth Ashley Wagster	Todd W Giles Pamela Cox Resource Financial Services Inc
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

_____

_____

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:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be

provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	3068	7/3/2019
James O. Spence, Master In Equity	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Allen Dunn II 301 Stoneridge Drive Columbia, SC 29210

Thomas D. Efland Jr. 150 Tiger Paw Ln. Irmo, SC 29063
Brent Michael Takach 3007 Millwood Avenue Columbia, SC 29205
William Wesley Johnson Jr. 1031 Center Street West Columbia, SC 29169

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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