THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Circuit Court Judge

Case No.: 2017-CP-07-00327
Appellate Case No.: 2019-001860

Timothy A. Summerall, ...Respondent,

v.

Beaufort County, ...Appellant.

APPELLANT'S INITIAL BRIEF

Christopher L. Murphy, Esquire
RESNICK & LOUIS, P.C.
146 Fairchild Street, Suite 130
Charleston, SC 29492
Phone: (843) 800-1187
Email: cmurphy@rlattorneys.com
Attorney for Appellant

Other Counsel of Record:

Terry A. Finger, Esquire
FINGER, MELNICK & BROOKS, P.A.
35 Hospital Center, Suite 200
Post Office Box 24005
Hilton Head Island, SC 29925-4005
Phone: (843)-681-7000
Email: tfinger@fingerlaw.com
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. Should the trial court's decision be reversed where it erred in failing to recognize the property exchanged in the 2011 quitclaim deeds?

II. Should the trial court's decision be reversed where it erred in establishing the boundary line in accordance with Youmans' survey which disregarded the intent of the parties?

III. Should the trial court's decision be reversed where it erred by refusing to consider the intent of the parties?

STATEMENT OF THE CASE

This appeal arises out of a property line dispute between Beaufort County and Timothy A. Summerall. Specifically, the parties sought to establish the location of the property line on the western side of Bostick Road and the adjacent property lot on the eastern side of Bostick Road which is located in the Salem Plantation Subdivision and owned by Respondent, Timothy A. Summerall (hereinafter "Lot 1").

Appellant, Beaufort County, filed this lawsuit on February 23, 2017 in the Court of Common Pleas in Beaufort County claiming that it was the rightful owner of the fifty (50) foot road right of way, Bostick Road, and that Respondent constructed a fence that crosses through Bostick Road. In its Complaint, Appellant sought damages in Trespass and Private Nuisance as well as a mandatory injunction requiring Respondent to move the fence. Respondent filed an Answer on May 23, 2017 asserting a counter claim to quiet the title and the boundary to Lot 1 in his favor. Appellant then filed its response to Respondent's Counter Claim on June 6, 2017. Appellant filed a Motion for Summary Judgment on October 17, 2017. The Motion was subsequently denied on November 20, 2018.

The Honorable Marvin H. Dukes presided over the trial of the matter on March 26, 2019 and filed an order ending the case on June 19, 2019. The causes of action for Trespass and Private Nuisance were removed and the matter was considered a quiet title action. Both parties produced various surveys relating to the property line at issue. After hearing the testimony of numerous experts and the arguments of the parties, Judge Dukes found that Respondent proved its case by the greater weight of the evidence and was entitled to prevail on the quiet title claim concerning the location of the boundary line along Bostick Road. Additionally, Judge Dukes ordered that the property line be consistent with David S. Youmans' survey.

After the final order was filed on June 19, 2019, Appellant sought reconsideration of the Court's findings. The motion hearing was conducted on October 4, 2019. On October 9,2019, Judge Dukes filed a Form 4 order denying Appellant's Motion for Reconsideration. This appeal is in response to the order denying Appellant's motion to reconsider the trial court's Order dismissing the complaint of Appellant. Appellant challenges the trial court's finding that Respondent proved the location of the boundary line by the greater weight of evidence and was entitled to prevail on the quiet title claim.

STATEMENT OF FACTS

The basis of the dispute between Appellant and Respondent was the uncertainty of the east-west boundary line between their parcels of land. The history of this boundary dates back to 1965 and by all accounts was incorrect from its creation. The subject property was originally platted as Lot 1 of Phase I of the Salem Plantation Subdivision back in 1965. (**Appellant Trial Exhibit A - 1965 Plat from H.F. Wilson**). In 1966, Phase II of the subdivision was platted for Paul and Marjorie Trask. **(Appellant Trial Exhibit B - 1966 Plat from Roy Hussey**). The original property lines plats which I refer to as the 'development lines' simply did not match up with the plats.

In 2005, Appellant accepted Bostick Road into its road system when Paul and Marjorie Trask deeded over a 60 foot right of way to Appellant. (**Appellant Trial Exhibit C - deed from Trask to County**). This deed gave Appellant ownership in the Bostick Road which fell on one side of the disputed property line. It was also in 2005 that David Gasque prepared a plat of the property which showed the areas in question. (**Appellant Trial Exhibit D - Gasque 2005 plat**). As the court can see, the plat lists .02 acres off Bostick Road and .07 acres as "areas of confusion." In addition, the plat marks L1 as 13.38 foot which should be 3.38 feet and L2 as 10 feet. (**Appellant Trial Exhibit D - Gasque 2005 plat**).

In 2011, Leonard and Melanie Williams owned the property and discovered an error with the Phase I and Phase II plats as applied to Lot 1. The error surfaced when the Williams started the process of refinancing the loan on the Lot in order to build a home on their property. (**Trial Transcript – 82:15-23**). In order to obtain the financing and clean up the title issues, Melanie and Leonard Williams exchanged quitclaim deeds with Appellant to establish a 50' right of way for Bostick Road and to alter the location of the property line in order to allow it to match up with the property lines across the street. (**Trial Transcript – 34:24-35:4; 71:8-14; 82:24-83:8**).

In the first deed filed July 28, 2011, Leonard and Melanie Williams deeded Appellant an area not to exceed 3.38 feet. (**Appellant Trial Exhibit E - quitclaim deed to County**). This deed references the 2005 Gasque plat. In August 26, 2014, Appellant deeded Leonard and Melanie Williams 10 feet of Bostick Road which established a 50 foot right of way. (**Appellant Trial Exhibit F - quitclaim deed to Leonard and Melanie Williams**). The deed also referenced the 2005 Gasque plat.

While the quitclaim deeds are not ideal and may be confusing, the intent of the parties is not in dispute. The intent of the 2011 quitclaim deeds was to fix the problems with the Phase I and Phase II Plats of the property. In 2012, David Gasque prepared another plat that clearly shows the exchanged property. (**Appellant Trial Exhibit G - Gasque 2012 plat**). The Court can see L2 which references the 3.38 foot triangle the Williams deeded to the county in July of 2011. The plat also shows L1 which marks the 10 feet that Appellant deeded to the Williams in August of 2011. (**Appellant Trial Exhibit G - Gasque 2012 plat**).

In February of 2014, Respondent purchased the property for $95,000.00 from Leonard and Melanie Williams. After purchasing the property, Respondent and his closing attorney, Ray Williams simultaneously exchanged warranty deeds on the property. (**Appellant Trial Exhibit K**

and L - additional 2014 deeds). The warranty deeds reference both the 1956 Plat by H.F. Wilson and the 2014 Plat from David Youmans, but they ignore all other deeds in the chain of title. The sole purpose of this 2014 deed exchange was to get David Youmans' survey into the chain of title of Appellant's property. (**Trial Transcript – 151:6-23**). Following the trial of the case, the Court ruled that the 'Youmans line' applied, which is shown in Respondent's Exhibit 1M. (Respondent Trial Exhibit 1M).

In September 14, 2016, David Gasque prepared a plat which shows the lines of all the deeds filed in this case. (**Appellant Trial Exhibit M - 2016 Gasque plat**). The plat demonstrates the right of way lines using the David Youmans' plat in orange and the right of way lines if the 2011 quitclaim deeds are considered in yellow. As the Court can see, the 'Youmans' line' severs a building on Lot 15 of Phase II and currently leaves Appellant with a 19.71 foot right of way at the end of Bostick Road. (**Appellant Trial Exhibit M - 2016 Gasque plat**).

STANDARD OF REVIEW

Rule 59(e), SCRCP, is substantially similar to Rule 59(e), FRCP and the United States Supreme Court has explicitly described a Rule 59(e), FRCP as a motion which "involves reconsideration of matters properly encompassed in a decision on the merits" Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). While Rule 59(e), FRCP governs motions to alter or amend a judgment, the Rule does not provide a standard under which a district court may grant such a motion. The Fourth Circuit has articulated "three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998).

"A party may wish to file such a motion when (s)he believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam, 361 S.C. at 21, 602 S.E.2d at 778. In accordance with this principle, the court in Elam said that parties would usually be allowed to request that the court reconsider its decision even if that meant rehashing all or part of an argument that had previously been presented. *See* id.; *see also* Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992) (stating that the purpose of a Rule 59(e) motion is allow the judge an opportunity to reconsider issues and arguments.... properly encompassed in a decision on the merits'").

SUMMARY OF THE ARGUMENT

The sole issue in this case was the determination of the location of the property line on the western side of Bostick Road and Respondent's property, Lot 1. **(Motion for Reconsideration Transcript – 4:12-14).**

At the trial of this case and the subsequent hearing on the Motion for Reconsideration, parties presented evidence of three possible locations of the property line in this matter:

> The first possible location, hereinafter referred to as the 'development line' was formed back when the subdivision as created. **(Motion for Reconsideration Transcript – 4:17-22).** This line is marked on Respondent's Exhibit 1M labeled "line per Plat by David S. Youmans...". **(Respondent Trial Exhibit 1M).**
>
> The second possible location, hereinafter referred to as the 'quit claim line' was created in 2011 when Appellant and the owners of Lot 1 exchanged quitclaim deeds. **(Motion for Reconsideration Transcript – 4:23-5:3).** This line is marked on Respondent's Exhibit 1M labeled "LINE AS AGREED TO BY BOOK 03080...". **(Respondent Trial Exhibit 1M).** This is the line that Appellant argued was the proper line.
>
> The third possible location, hereinafter referred to as the 'Youmans' line,' is a hybrid of the 'development line' and the only consideration of ***one*** of the 2011 quitclaim deeds (emphasis added). **(Motion for Reconsideration Transcript – 5:4-8).** This line is marked on Respondent's Exhibit 1M labeled "line per Plat by

David S. Youmans Additional 10' Being Quitclaimed.' (**Respondent Trial Exhibit 1M**). This is the line the Trial Court chose to establish at the trial of this case. (**Final Order ¶ 18**).

The Trial Court failed to consider the entirety of the chain of title of the property in question and the intent behind each transfer in ownership of the property. Appellant therefore respectfully requests that this Court consider each of the points raised in this appeal regarding the nature of this dispute, the procedural history, the evidence presented, the relevant facts, the applicable legal analysis, and the proper relief.

ARGUMENT

I. The Trial Court Failed to Recognize the Property Exchanged in the 2011 Quitclaim Deeds.

a. In 2011, Appellant and the Williams owned adjacent property on each side of the disputed property line and were free to agree to move it as they saw fit.

The only relevant facts in this boundary dispute involves the property exchanged between Appellant and the Williams in the 2011 quitclaim deeds. In short, did the quit claim deeds alter the location of the 'property line'?

At the time of the 2011 exchange, Appellant clearly owned the property on the westside of the property line, referred to as Bostick Road, and the Williams owned the property on the eastside of the property line, referred to as Lot 1. **(Motion for Reconsideration Transcript – 5:12-15)**. **(Appellant Trial Exhibit C - deed from Trask to County)**. As such, the parties were free to agree to move the property line anywhere they wanted.[1]

[1] Respondent conceded to this point. **(Motion for Reconsideration Transcript – 6:5-7). (Trial Transcript – 147:25-148:3).**

The exchange of property in the 2011 quitclaim deeds was done for the sole purpose of correcting prior boundary line uncertainties. **(Motion for Reconsideration Transcript – 5:19-20). (Trial Transcript – 8:5-14; 34:24-35:4; 71:8-14; 82:15-23).**

The general rule is well established in this State that when determining the location of a line in dispute, artificial marks control courses and distances. *See* Connor v. Johnson, 59 S.C. 115, 37 S.E. 240. Established corners and marked lines represent the survey as it was actually made, while courses and distances are merely descriptions of the acts done by the surveyors. Plats are made up from loose memoranda made in the field. *See* Klapman v. Hook, 206 S.C. 51, 32 S.E.2d 882, 883 (S.C. 1945).

According to the leading case on the subject, Fulwood v. Graham: "In locating lands, the following rules are resorted to, and generally in the order stated; (1) Natural boundaries; (2) Artificial marks; (3) Adjacent boundaries; (4) Course and distance. Neither rule, however, occupies an inflexible position, for when it is plain that there is a mistake, an inferior means of location may control a higher." 30 S.C. L. 491, 1 Rich. 491.

In Sturgeon v. Floyd, the Court stated the rule as follows:

> "Mere distance is never regarded when it conflicts with either the actual marks made by the surveyor or the well-ascertained marks called for on the plat. The trees that the surveyor marked; the rocks that he set up; the fixed and permanent objects which he calls for, are more certain indications of intention than distances or even courses."
> 3 Rich. 80.

"Where a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses[,] and distances of the property conveyed." Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979). The Court in Klapman stated:

> "In locating land upon the ground from the calls and descriptions in the map, plat, the same primary rules apply as exist in the locating of calls and descriptions in a deed containing

> no such reference; that is, the various calls are given the same order of preference. Thus, where the lines have in fact been located and designated by monuments and there is a discrepancy between the calls for these monuments and courses and distances shown by a plan referred to in the conveyance, the normal rule as to the controlling effect of calls for monuments will be followed."
> 206 S.C. at 55, 32 S.E.2d at 883 (*citing* 8 Am. Jur., 791).

Appellant recognizes the above rulings and also recognizes that South Carolina courts also acknowledge that the rules for determining disputed boundaries "are not inflexible and are subject to modification depending upon the particular facts of each case." Klapman, 206 S.C. at 56, 32 S.E.2d at 884. Determining the grantor's intention is the primary purpose for which rules determining boundaries exist, and all such rules yield to such intention when discovered because ***"[t]he vital question is the intent of the grantor at the time the deed is executed."*** Id, (*emphasis added*) (*citing* Ouzts v. McKnight, 114 S.C. 303, 103 S.E. 561 (1920). In Ouzts, it was undisputed that both parties to the deed intended an equal division of a tract containing 1,000 acres and in undertaking to accomplish this purpose, the surveyor made a mistake in running the line on the ground, giving one party 425 acres and the other 575 acres, thus it was held that the line run on the ground did not represent the mutual intention of the parties.

Mr. David Youmans testified as an expert for the Respondent in the trial of this case after he was asked by Respondent to survey his property. According to his testimony he conducted an extensive review of the records in his file that pertained to Lot 1. **(Trial Transcript –119:25-120:3).** The general posture of his testimony was resorting to the rule that the distance shown on a plat is of lesser importance in locating the land than is the boundary, which is of course true; but as South Carolina recognizes, that is not an inflexible rule.

Additionally, Mr. Youmans was able to acknowledge the existence of the 10 feet acquired by the Williams from Appellant and the 50 foot right-of-way acquired by Appellant from the

Williams in the 2011 quitclaim deeds. **(Trial Transcript –123:13-124:4).** From Mr. Youmans' testimony:

> Q. Okay. And in those deeds there was clearly establishing a 50 foot right-of-way - - an intent for a 50 foot right-of-way?
>
> A. That's correct.

(Trial Transcript – 134:2-5.)

However, Mr. Youmans did not recognize the intent of either party in the quitclaim exchanges between Appellant and Williams. Thus, a determination of the location of the boundary line in dispute depends in large measure on, (1) where the Williams intended the boundary line to be when they deeded the property to Appellant in 2011 and (2) where Appellant intended the boundary line to be when it deeded the property to the Williams in 2011. **(Motion for Reconsideration Transcript – 5:21-25).** The only relevant parties executed 2011 quitclaim deeds, which again, were executed for the sole purpose of clarifying the previously uncertain boundary line.

At the trial of this case, the Trial Court:

1. Failed to recognize the intent of the two property owners involved in the 2011 quitclaim deed exchange, and therefore, the property exchange;
2. The Court also failed to recognize these parties' rights to relocate their property line by agreement; and
3. The Court failed to give any weight or consideration to the 2011 quitclaim deeds or the intent of the parties to alter the location of the property line in the execution of these deeds.

As a practical matter, any evidence regarding the location of the property line prior to 2011 is relevant only to show the prior errors and recognize the necessity to fix the problem. **(Motion for Reconsideration Transcript – 6:24-25).**

b. In 2011, Appellant and the Williams exchanged quitclaim deeds which altered the property line between Bostick Road and Lot 1.

Clearly, Appellant and the Williams intended to convey some property to each other when they executed and filed the 2011 quitclaim deeds. **(Motion for Reconsideration Transcript – 5:19-20).**

"One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened." Bennett v. Investors Title Ins. Co., 370 S.C. 578, 590, 635 S.E.2d 649, 655 (Ct. App. 2006). "[O]nce a contract or agreement is before the court for interpretation, the main concern of the court is to give effect to the intention of the parties." Williams v. Teran, Inc., 266 S.C. 55, 59, 221 S.E.2d 526, 528 (1976). "Moreover, in ascertaining [the grantor's] intention, the deed must be construed as a whole and effect given to every part thereof, if such can be done consistently with law." Bennett, 370 S.C. at 590, 635 S.E.2d at 655. "As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance, they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of land." Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981).

When a deed is unambiguous, any attempt to determine the grantor's intent must be limited to the deed itself and using extrinsic evidence to contradict the plain language of the deed is improper. *See* Springob v. Farrar, 334 S.C. 585, 590, 514 S.E.2d 135, 138 (Ct. App. 1999). The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself. *See* Smith v. DuRant, 236 S.C. 80, 113 S.E.2d 349 (1960). Instead, when intention is not expressed accurately in the deed, evidence *aliunde* may be admitted to supply or explain it. Thus, the deed is not varied or contradicted but is explained or corrected. *See* id.; *see also* Scott v. Scott, 216 S.C. 280, 293, 57 S.E.2d 470, 476 (1950) ("One of the most valuable

safeguards thrown around a deed is that parol evidence is not admissible to vary or contradict the terms of a written contract, and this applies in all its strictness to actions involving deeds."); *see also* Walters v. Summey Bldg. Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993) ("The construction of an unambiguous deed is a question of law, not fact. The terms of such a deed may not be varied or contradicted by evidence drawn from sources other than the deed itself."), *cert. denied* (February 17, 1994). Only "[w]hen the agreement is ambiguous, the court may take into consideration the circumstances surrounding its execution in determining the intent." Williams, 266 S.C. at 59, 221 S.E.2d at 528. Additionally, this Court has held that when multiple documents are executed contemporaneously in the course of and as a part of the same transaction, the Court may consider and construe the instruments together in order to ascertain the intention of the parties and the terms of the agreement. *See* Café Associates, Ltd. v. Gerngross, 305 S.C. 6, 10, 406 S.E.2d 162, 164 (1991).

In this case, the Trial Court applied a partial finding of 10' which was referenced in one of the quitclaim deeds but failed to consider any conveyance of property referenced in the second quitclaim deed, and instead applied the "Youmans' line". Simply put, the Trial Court failed to recognize the intent of the parties regarding the 2011 quitclaim deeds and specifically, the second quitclaim deed. (**Appellant Trial Exhibit E - quitclaim deed to County**).

At the trial of this case, Appellant presented four witnesses to testify about the intent of the parties when executing the 2011 quitclaim deeds and the literal interpretation of the quitclaim deeds when looking through the chain of title and the actual property exchanged reading the property descriptions in the deeds.

An expert witness for Appellant, surveyor David Gasque, was involved with the property that is the subject of this lawsuit as early as 2005, when he surveyed the property and first noted the areas of confusion. (**Beaufort County Trial Exhibit D - Gasque 2005 plat**). Mr. Gasque was also involved with the property during the 2011 Quitclaim deed exchange between Appellant and the Williams in order to clear up the areas of confusion. Specifically, he testified that "the purpose of [his] plat was to clean the whole process up." **(Motion for Reconsideration Transcript – 5:25-6:2). (Trial Transcript – 32:19-20). (Beaufort County Trial Exhibit G - Gasque 2012 plat).** Mr. Gasque added: "And the whole purpose was this, in our conversations, was to make sure we cleared the buildings and have a clear-cut 50 foot right-of-way for purposes of ingress/egress." **(Trial Transcript – 33:21-24).**

Additionally, Mr. Gasque, prepared one of Respondent's trial exhibits, Respondent Trial Exhibit 1M. His survey recognizes the line running N19'25'37 and labeled "LINE AS AGREED TO BY BK 0380 PGS 0655-0657..." This would be the location of the 'quitclaim line' as agreed to by the 2011 exchange of deeds. (**Trial Transcript – 27:12-21**). In addition, Mr. Gasque showed the 50' distance from the 'quitclaim line' to the other side of Bostick Road. (**Trial Transcript – 33:4-7**). Finally, Mr. Gasque testified that the 'quitclaim line' was "almost a creation [of the property line] because we're having to get a property line agreement between the Williams and the County. So - - and this is what they agreed to." **(Trial Transcript – 83:5-8).** As the Court can see, by applying the 'quitclaim line' per the 2011 quitclaim deeds, Bostick Road becomes 50' wide and lines up with the property and structures on the other side of Bostick Road, rather than through a building if the Court applies the "Youmans' line".

The second expert for Appellant, Zyad "Sam" Khalil, surveyed the property lines recognizing all of the deeds. Respondent's Trial Exhibit 2 summarizes his findings in the form of

a plat. (Respondent Trial Exhibit 2.) Mr. Khalil recognized the subject property and showed two property lines on his plat. The first property line was drawn according to Plat Book 138/61 and runs S12'48'29'. **(Trial Transcript – 88:25:89-2; 89:19-24)**. The second property line is drawn according to 2011 quitclaim deeds and Deed Book 3080/655 and Plat Book 134/115 and runs N19'26'33. **(Trial Transcript – 89:5-12)**, **(Respondent Trial Exhibit 2)**.

No one disputes the erroneous location of the first property line. The issue in this case is the location of the property line pursuant to the 2011 quitclaim deeds which Mr. Khalil clearly marked on this exhibit. In order to determine the location of the line, Mr. Khalil applied the language in the 2011 quitclaim deeds. **(Motion for Reconsideration Transcript – 6:12-19).** The 2011 quitclaim deeds altered the location of the property line and established a new location. **(Motion for Reconsideration Transcript – 6:12-19).** Looking at the exhibit, the 'quitclaim line' runs parallel with the line on the other side of Bostick Road. **(Respondent Trial Exhibit 2)**.

Finally, Vick Gault testified in the trial of this case as an expert title abstractor. In conducting her title search, she went back through forty years of public records related to the property in order to establish the full chain of title. **(Trial Transcript – 100:1-2).** From Mrs. Gault's testimony:

Q. And what did the - - did you find in the public records?

A. The public records told me that the quit claim deeds from Williams to the County and the County to Williams established a 50-foot boundary line for the Bostick Road leaving the remainder to the owner of Lot 1, which was Williams.

Q. All right. And when you talk about those quit claim deeds, those are the 2011 quit claim deeds?

A. Correct.

Q. All right. Now, you were here for David Gasque's testimony?

A. Uh-huh.

Q. And you got to say yes.

A. Yes.

Q. And he talked about certain lines as to Bostick Road, correct?

A. Yes.

Q. And he also talked about some triangles that were deeded from the County to Melanie Williams and Leonard Williams?

A. Yes.

Q. And do the public records -- did you find that to be consistent with the public records?

A. I did.

Q. All right. And is there anything that Mr. Gasque said that differed from the public records that you found?

A. No.

(Trial Transcript – 100:25-102:4).

Thus, according to her trial testimony, Mrs. Gault was in agreement with the opinions of Mr. Gasque, as well as the public records and chain of title of the property, which explained that the 2011 quitclaim deeds from the Williams to Appellant and from Appellant to the Williams, established a 50' boundary line for the Bostick Road leaving the remainder to the owner of Lot 1, which at the time was the Williams.

c. The Trial Court failed to recognize or address the intent of the parties to the 2011 quitclaim deeds.

Admittedly, the 2011 quitclaim deeds are not ideal and require extrinsic evidence and expert analysis. However, the Court must also look to the intent of the parties to the 2011 quitclaim deeds. This means the Court must consider the intent of both Appellant and the Williams as to the placement of the property line back in 2011 when the quitclaim deeds were executed.

In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public policy. *See* Wayburn v. Smith, 270 S.C. 38, 239 S.E.2d 890 (1977). The court in Hunt v. S.C. Forestry Commission, set forth the following standard of review relating to the construction of deeds:

> "To construe a deed, a court looks first at the language of the instrument because the court presumes it declares the intent of the parties. When, and only when, the meaning of a deed is not clear, or is ambiguous or uncertain, will a court resort to established rules of construction to aid in the ascertainment of the grantor's intention by artificial means where such intention cannot otherwise be ascertained."
>
> 358 S.C. 564, 569, 595 S.E.2d 846, 848 (Ct. App. 2004).

"If the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence." Id. While a trial court's findings of fact in a nonjury action at law should not be disturbed on appeal unless they are without evidentiary support, a reviewing court is free to decide questions of law with no particular deference to the trial court. *See* Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C., 353 S.C. 327, 334, 577 S.E.2d 468, 472 (2003) ("In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law.");

To determine the grantor's intention, we must construe it in accordance with the rules applied to deeds and other written instruments. *See* K & A Acquisition Grp., LLC v. Island Pointe, *LLC*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009). In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the

law. Id. The intention of the grantor must be found within the four corners of the deed. (*See* Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987) *citing* Sims v. Clayton, 193 S.C. 98, 7 S.E.2d 724 (1940)).

Further, "[i]f this [c]ourt decides that the language in a deed is ambiguous, the determination of the grantor's intent then becomes a question of fact" and evidence may be admitted to show the intent of the parties. Santoro v. Schulthess, 384 S.C. 250, 272, 681 S.E.2d 897, 908 (Ct. App. 2009); *see also* S.C. Dep't of Nat. Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 303 (2001) (applying the rules of contract construction to a restrictive covenant in a deed and stating "[a] contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. It is a question of law for the court whether the language of a contract is ambiguous. Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties' intent is then a question of fact.")

Attorney Josh Gruber represented Appellant back in 2011 and testified at the trial of this case. Mr. Gruber testified that he was the County Attorney for Beaufort County, involved in the execution of the 2011 quitclaim deeds and the exchange of property between the Williams and Beaufort County. **(Motion for Reconsideration Transcript – 6:3).** Mr. Gruber explained:

> So we undertook to prepare these quit claim deeds to basically do a cross exchange of property with Beaufort County providing some land to the landowners. The landowners providing some land to Beaufort County in an effort to resolve the areas of confusion and what would ultimately result in a 50 foot right-of-way accessing the parcel back behind this area which would have been the minimum requirement necessary for a subdivision development at the time.
>
> **(Trial Transcript – 8:5-14).**

During cross-examination, Mr. Gruber confirmed on different occasions that the sole purpose of the 2011 quit claims deeds. He stated: "...the ultimate goal with this transfer was to

result in a 50 foot right-of-way between the two parcels on either side." (**Trial Transcript – 13:2-4**). He added: "I think the intent by executing these quit claim deeds was to resolve any confusion that was on the plat in question." (**Trial Transcript – 17:8-10**).

In his cross examinations, Mr. Gasque also testified that following the execution of the 2011 quitclaim deeds, he was instructed to create a plat that reflected the quitclaim deeds and therefore remove the areas of confusion and show the Bostick Road 50' right of way to Beaufort County. (**Trial Transcript – 69:5-14**).

Respondent testified in his individual capacity as the owner of Lot 1 as well as an expert surveyor in the trial of this case. In his testimony, he agreed that in construing a deed, the number one and most controlling issue to consider, is the intent of the parties to the deed. (**Trial Transcript – 147:20-24**). Additionally, Respondent also acknowledged that the intent of the 2011 quitclaim deeds was to put the uncertainties of the property line to rest. **(Motion for Reconsideration Transcript – 6:5-7).** From Respondent's trial testimony:

Q. All right. Now, you also -- let me ask you this. In these lines, did you -- well, you would concede that those 2011 quit claim deeds fall within the chain of title as to this property?

A. Yes.

Q. All right. And you haven't done any action to set aside those quit claim deeds, have you?

A. I have not.

Q. And your testimony was that you did not understand the quit claim deeds, I believe; is that correct?

A. I understand the intent of them, but the actual -- -- conveyed is not at all clear.

Q. Well, tell me what was the intent of them. What do you think the intent was?

A. The intent was to put the uncertainties that Mr. Gasque had pointed out to rest.

(Trial Transcript – 149:5-25).

Applying the aforementioned established rules of interpreting deeds, coupled with the relevant testimony, we believe that the property exchanged by the Williams and Appellant through the execution of the 2011 quitclaim deeds was intended to grant a 50 foot right-of-way to Appellant and establish the property line as the 'quitclaim line' as indicted by the deeds and trial testimony of Mr. Gasque, Mr. Khalil and Ms. Gault .

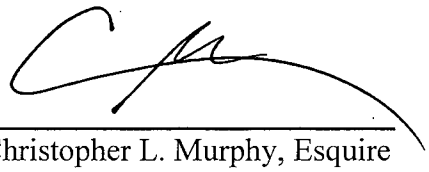
The clear weight of the evidence shows that the intent of the parties is not in dispute. All trial testimony of record evidences that it was the parties' intent to establish the line referred to as the 'quitclaim line'. The Trial Court ignored all testimony as to the intent which violates the law of South Carolina, thus we believe that the findings of law should be reversed.

CONCLUSION

Because the Trial Court erred in failing to recognize the property exchanged in the 2011 quitclaim deeds and the parties' intentions behind that property exchange, the trial court's denial of Appellant's Motion for Reconsideration was improper. This court should reverse the Trial Court's order and remand the case with instructions to issue a ruling which complies with the intent of the parties. The facts of this case and the applicable law compel that result.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,



Christopher L. Murphy, Esquire
RESNICK & LOUIS, P.C.
146 Fairchild Street, Suite 130
Charleston, SC 29492
Phone: (843) 800-1187
Email: cmurphy@rlattorneys.com
Attorney for Appellant

December 2, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Circuit Court Judge

Case No.: 2017-CP-07-00327
Appellate Case No.: 2019-001860

Timothy A. Summerall, ... Respondent,

v.

Beaufort County, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief on Timothy A. Summerall by depositing a copy of it in the United State Mail, postage prepaid on December 2, 2019, addressed to his attorney of record, Terry A. Finger, Post Office Box 24005, Hilton Head Island, SC 29925-4005

December 2, 2019

Christopher L. Murphy, Esquire
146 Fairchild Street, Suite 130
Charleston, SC 29492
Phone: (843) 800-1187
Email: cmurphy@rlattorneys.com
Attorney for Appellant

RESNICK & LOUIS, P.C.
ATTORNEYS AT LAW

Christopher L. Murphy
Admitted in SC
cmurphy@rlattorneys.com

REPLY TO THE CHARLESTON OFFICE
146 Fairchild Street, Suite 130
Charleston, SC 29492
(843) 800-1187

December 2, 2019

VIA US MAIL
The Honorable Jenny Abbot Kitchings
Clerk of South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Beaufort County, Appellant v. Timothy A. Summerall, Respondent*
Case No.: 2017-CP-07-00327
Appellate Case No.: 2019-001860

Dear Ms. Kitchings:

Enclosed for filing, please find one original and two copies of the Appellant's Initial Brief and the Designation of Matter, in the above-referenced matter. We would appreciate you returning our clocked-in copies to us in the provided self-addressed, stamped envelope. By copy of this letter, I am herby serving on all counsel of record. Please give me a call if you have any questions or concerns.

With kindest regards, I am

Sincerely,

Christopher L. Murphy, Esq.
For the Firm

CLM/mh
Enclosures

cc: Terry A. Finger, Esq. (with enclosures)
Thomas J. Keaveny, II, Esq.

7018 1130 0001 1165 9390

RESNICK & LOUIS, P.C.
ATTORNEYS AT LAW

146 Fairchild Street, Suite 130
Charleston, SC 29492

The Honorable Jenny Abbot Kitchings
Clerk of South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211