THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2016-CP-32-00387
Appellate Case No. 2019-001609

Rachel Farley, as Trustee of the Louise Farley Revocable Trust Dated February 8, 2005; Drummond B. Farley; Rachel R. Farley; Carol E. Farley; and Nancy E. Farley ..... Appellants,

v.

Church of the Harvest of Columbia, Inc., ... Respondent.

INITIAL BRIEF OF APPELLANT

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TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err in failing to require Respondent to remove the obstructions from the easement?

STATEMENT OF THE CASE

This is an appeal from the Lexington County Court of Common Pleas by Appellants, Rachel Farley, as Trustee of the Louise Farley Revocable Trust; and Rachel R. Farley, individually (hereinafter also referred to as "The Trust"), from a summary judgment entered in favor of the Respondents, The Church of the Harvest of Columbia, Inc., (hereinafter also referred to as the "The Church").

The Trust owns a ten acre tract of land that is accessible only by way of an appurtenant easement over land of The Church. (S.J. Order p.1). The easement was reserved by The Trust's predecessor in interest, Mrs. Louise Farley. (S.J. Order p.7). Specifically, Mrs. Farley owned approximately nineteen acres of land adjacent to land owned by The Church. (Compl. ¶ 5). Mrs. Farley and The Church entered into an Agreement for the sale of approximately eight acres, divided into three Phases, of the property. *Id.* As a result of the sale, the remainder of the property (ten acres) would become landlocked. (S.J. Order p.3). To avoid this, the Agreement contained a provision allowing Mrs. Farley to retain an easement for access to the remaining ten acre tract. *Id.* Pursuant to the terms and conditions of the Agreement, Mrs. Farley, her heirs and assigns, held by both reservation and grant, an easement 66 feet in width along the Western boundary of Phase II and Phase III. (S.J. Order p.7). By deed dated March 8, 2005 and recorded in Deed Book 9960 at page 286, Mrs. Farley conveyed the ten acre tract together with the appurtenant easement to The Trust. *Id.*

The Church obstructed and/or encroached upon The Trust's easement by erecting a parking lot two buildings. (S.J. Order p.8). The Church refused to remove these obstructions and encroachments upon demand of the Trust. The Trust brought the instant action seeking, *inter alia*, a declaration from the Circuit Court of the parties one to another including a declaration that The Church must remove all obstructions from the easement. (Compl. ¶ 6). The Circuit Court granted summary judgment in favor of The Church and dismissed the complaint without addressing these matters. (Compl. ¶ 5-6).

STANDARD OF REVIEW

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (S.C. App. 2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991); *Nelson v. Charleston County Parks & Recreation Comm'n*, 362 S.C. 1, 605 S.E.2d 744 (S.C. App. 2004).

However, when reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (S.C. App. 2004). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (S.C. App. 2004).

STATEMENT OF ISSUES ON APPEAL

1. Did the lower court properly rule that Respondent should be granted summary judgment as to Appellant's claims on the grounds that she owns an express easement and Respondent has encroached upon that easement?

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANT OWNS THE EASEMENT ON THE PROPERTY, HAS AN UNFETTERED RIGHT TO USE OF THAT EASEMENT, AND APPELLANT'S CLAIM IS NOT BARRED BY THE STATUTE OF LIMITATION.

The lower court erred in granting Respondent's motion for summary judgment on Appellant's claims because it is clear that Appellant has an express easement, Appellant has an unfettered right to use of that easement, Respondent has violated their rights by encroaching upon that easement, and the continued violation of the easement continues and resets the statute of limitations each day the encroachment remains. As an initial matter, it is clear that Appellant has an express easement. "A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the land." *Ward v. Evans*, 387 S.C. 401, 409, 693 S.E.2d 7, 11 (Ct. App. 2010). In 1994, Appellant signed an agreement with Respondent whereby the Respondent purchased about eight acres of land and creating an express easement in favor of Farley to traverse the land purchased by Respondent in order for Farley to access the remainder of her land.

Equally clear, however, an express "easement may be terminated by the servient estate owner's adverse use or possession of the easement area for the period of prescription." Jon W. Bruce & James W. Ely Jr., *The Law of Easements & Licenses in Land* ' 10:25 (Westlaw database update Mar. 2018). "To establish a prescriptive easement, one must show: (1) continued and

uninterrupted use or enjoyment of the right for [the statutory period[1]]; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is either adverse or under claim of right." *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015). "[A] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." *Id.* at 306, 772 S.E.2d at 170.

Respondent cannot claim an easement by prescription as it fails as a matter of law. First, Respondent's adverse use of the property falls short of the statutory period, having begun sometime after February 2006, which is ten years prior to the filing of the lawsuit. Second, the Respondent's use was not adverse as Appellant gave Respondent permission to use. *See, e.g., Bundy*, 412 S.C. at 307-308, 772 S.E.2d at 171-72 (evidence was sufficient to support special referee's finding that claimant's use of disputed road to access his property was permissive, and thus, defeated claimant's acquisition of a prescriptive easement). Therefore, for either reason, Respondent cannot prove that it terminated Appellant's easement by prescription.

Furthermore, Respondent's assertion of the three-year statute of limitations period is without merit. Defendant contends that the allegations made in the Plaintiff's complaint are barred by the three year statute of limitations found in S.C. Code Ann. §15-3-530. However, if and to the extent that Appellant seeks to establish her rights with regard to the easement, then the statutory period required for adverse possession applies. *See* Bruce & Ely, *The Law of Easements & Licenses in Land* ' 5:17 (Westlaw database updated Mar. 2018) ("In most jurisdictions, the period of

[1] Although some recent case law states that the statutory period is twenty years, *see Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 387, 390 (2015); *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016), the applicable statute currently provides for a ten-year period, *see* S.C. Ann. Code § 15-3-340 ("No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.").

prescription is derived by analogy from the statute of limitations governing actions to recover the possession of land. Courts typically rely on the adverse possession statute and assume, without discussion, that this measure determines the prescriptive period." (footnotes omitted)). In South Carolina, the limitations period for adverse possession is 10 years. *See* S.C. Code Ann. § 15-3-340; *see also supra* note 1.

Regardless of the labels attached to the various counts of Appellant's complaint against Respondent, the gravamen of those allegations is Appellant's right to the Easement and the Respondent's encroachment thereon. It is well established that in 2006, Respondent built a parking lot, a portion of which encroached on the Easement, and in 2009, built a structure, a portion of which encroached on the Easement. In both instances, Respondent's encroachment was unintended, and to the extent that Appellant knew of the encroachments, she did not take any action. It was not until the death of Ms. Louise Farley, when the property transferred to the Louise Farley Revocable Trust, that Appellant knew of the encroachment of the structure and asked Respondent to remove the encroachment from the easement. Respondent acknowledged the existence of an encroachment on Appellant's easement and acknowledged the existence of the easement. (Dep. of Kenneth Jumper). However, Respondent chose not to remove the encroachment on Appellant's easement. Eventually, the relationship between Appellant and Respondent deteriorated, leading to Appellant filing suit. The statute of limitations could not have begun to run until Appellant and Respondent were aware of the encroachment, which is well within the ten year statute of limitations. Thus, Respondent should not have been granted summary judgment by the lower court on this issue.

CONCLUSION

This Court should overturn and vacate the summary judgment order of the lower court as to granting Respondent summary judgment.

Respectfully submitted,

By: _____

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