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

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

Timothy A. Summerall, **Respondent,**

v.

Beaufort County, **Appellant.**

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Did the trial court commit reversible error in its order quieting title in the boundary line dispute between the parties' respective properties?

STATEMENT OF THE CASE

This appeal arises out of a property line dispute between Appellant Beaufort County, South Carolina (the "County") and Respondent Timothy A. Summerall ("Summerall") in which each party sought to quiet title in its favor.

The County is the current owner of a 50-foot-wide dirt and grass right of way commonly known as Bostick Road. *See* Final Order Ending Case, filed June 19, 2019 ("Order") at 1; Order, Findings of Fact ("FOF") ¶ 12; Tr. of Hr'g Mar. 26, 2019 ("Mar. Tr.") at 153:6–155:14. Summerall is the current owner of Lot 1 of Phase I of the Salem Plantation Subdivision ("Lot 1"), the western boundary of which is contiguous with and adjacent to eastern boundary of Bostick Road. *See* Order at 1; Order, FOF ¶ 1.

After Summerall constructed a fence that purportedly crossed and obstructed Bostick Road, the County filed the instant lawsuit against Summerall, who denied an encroachment and counterclaimed to quiet title in his favor. *See* Order at 1. Although the County initially asserted multiple claims against Summerall, the matter was ultimately tried solely as competing claims to quiet title. *See* Appellant's Initial Br. ("Appellant Br.") at 1. Below is a summary of the relevant evidence presented at trial.

A plat drafted by H.F. Wilson, dated September 15, 1965, and recorded in Plat Book 15 Page 31 (the "Wilson Plat") established the Salem Plantation Subdivision. *See*

Order FOF ¶ 2. Undisputedly, the Wilson Plat clearly noted the width of Bostick Road to be 60 feet. *See id.* ¶ 11. Notably, the Wilson Plat was the plat used in the first deed out from the common grantor to the initial owner of Lot 1, *see id.* ¶ 4 (Trask to Bell, dated August 30, 1969, recorded in Deed Book 167 Page 1), and is the plat to which all subsequent deeds to Lot 1 in Summerall's chain of title refer when describing Lot 1, *see id.* ¶ 5.

After the creation of Lot 1 and the Wilson Plat, the land on the opposite side of Bostick Road from Lot 1 was also platted and subdivided. *See* Order FOF ¶ 6. As is relevant here, such land included Lot 15, the eastern boundary of which is contiguous with and adjacent to the western boundary of Bostick Road, as evidenced by a plat drafted by Roy Hussey, dated June 1966, and recorded in Plat Book 15 Page 71 (the "Hussey Plat"). *See id.* ¶ 7.

Significantly, however, whereas the Wilson Plat depicts a right angle where the western boundary of Lot 1 along Bostick Road intersects the northern boundary of Lot 1, and also depicts a right angle where the eastern boundary of Lot 15 along Bostick Road intersects with the northern boundary of Lot 15, *see id.* ¶ 3, the Hussey Plat incorrectly depicts both of these angles in Lot 1 and Lot 15 as not being at 90 degrees, *see id.* ¶ 8.

A subsequent plat, drafted by Niels Christensen, dated August 1, 1967, and recorded in Plat Book 17 Page 32 (the "Christensen Plat") attempted to correct the above-referenced error in the Hussey Plat and to conform to the Wilson Plat. *See* Order FOF ¶ 9. Notably, the Christensen Plat was used in the property descriptions in the deeds in the chain of title for Lot 15. *See id.* ¶ 10.

In 2005, the parties' common grantor (Trask) deeded Bostick Road to the County. *See* Order, FOF ¶ 12. A plat drafted by David Gasque ("Gasque"),[1] dated November 28, 2005, recorded in Plat Book 110 Page 42 ("2005 Gasque Plat"), *see id.* ¶ 13, included various areas labeled as "Areas of Confusion" and noted that the "Survey does not match plat of record" and "Phase Plats of Subdivision do not agree," thus only exacerbating the confusion stemming from the incorrect Hussey Plat. *See id.* ¶¶ 14-15.

Summerall's predecessor-in-interest to Lot 1, Leonard and Melanie Williams (collectively, the "Williams"), owned Lot 1 in 2011 when, in the course of seeking a loan to build on Lot 1, the Williams discovered the errors in the various plats and deeds regarding the boundary between Bostick Road and Lot 1 and, thus, sought to rectify the same. *See* Appellant Br. at 3. In an effort to do so, the County agreed with the Williams to exchange quitclaim deeds, which the parties did in the summer of 2011. *See* Order, FOF ¶ 13.

Specifically, the County conveyed an approximately 10-foot strip on the eastern side of Bostick Road to the Williams, *see* Plf.'s Tr. Ex. F, and the Williams purportedly conveyed an approximately three-foot strip to the County, *see* Plf.'s tr. Ex. E. Undisputedly, this exchange of quitclaim deeds was premised on the 2005 Gasque Plat, *see* Order, FOF ¶ 13, and was intended to both narrow Bostick Road to a width of 50 feet, *see id.*, and to add the disputed 10 feet from Bostick Road to the western boundary of Lot 1, *see id.* ¶ 16.

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[1]Gasque was qualified as an expert in the field of land surveying without objection. *See* Mar. Tr. 26:24–27:3.

In 2016, David Gasque drafted a new plat, dated September 14, 2016 ("2016 Gasque Plat"), which indicates the mistake in the Hussey Plat, the correction set out in the Christensen Plat, and also includes the professional opinions of David S. Youmans ("Youmans")[2] and Summerall[3] as to the correct boundary of Lot 1 along Bostick Road. *See* Order, FOF ¶ 17.

Based on all of the foregoing evidence presented, the trial court ruled that the western boundary of Lot 1 along Bostick Road is as set forth by Youmans and Summerall. *See* Order, COL ¶¶ 6-7; Order ¶ 2. Specifically, the trial court ruled that the erroneous Hussey Plat cannot legally alter the western boundary of Lot 1 along Bostick Road. *See* Order, COL ¶ 4.

The County timely filed a motion for reconsideration, *see* Beaufort Cnty's Mot. to Reconsider, filed June 26, 2019, for which the trial court held a hearing on October 4, 2019, *see* Tr. of Hr'g Oct. 4, 2019. The thrust of the County's motion was that the trial court did not consider or account for the 2011 exchange of quitclaim deeds between the County and the Williams. *See* Mot. to Reconsider ¶¶ 6-9. The trial court ultimately denied the motion to reconsider, *see* Form 4, Judgment in a Civil Case, filed October 9, 2019, and the County timely filed an appeal from that order, *see* Appellant Br. at 2.

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[2]Youmans was qualified as an expert in the field of land surveying without objection. *See* Mar. Tr. 118:8-24.

[3]Summerall was qualified as an expert in the field of land surveying without objection. *See* Mar. Tr. 137:20–138:10.

STANDARD OF REVIEW

Motion to Reconsider

The County sought reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. *See* Mot. to Reconsider at 1; Appellant Br. at 4. Upon information and belief, the County's motion was not premised upon newly discovered evidence or an intervening change in the law but, rather, was based upon an alleged "clear error of law" and/or to "prevent manifest injustice." *See* Mot. to Reconsider at 2; Appellant Br. at 4.

> "The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Id.*

Smith v. Fedor, 422 S.C. 118, 124, 809 S.E.2d 612, 615 (Ct. App. 2017).

Underlying Order

Regarding the underlying order itself:

> "This [c]ourt reviews all questions of law de novo." *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009); *see also Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) ("Questions of law may be decided with no particular deference to the trial court." (quoting *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct. App. 2008))). "Review of the [circuit] court's factual findings, however, depends on . . . whether the underlying action is an action at law or an action in equity." *Fesmire*, 385 S.C. at 302, 683 S.E.2d at 807 (citing *Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775-76 (1976)).

Lollis v. Dutton, 421 S.C. 467, 477, 807 S.E.2d 723, 728 (Ct. App. 2017).

> Generally, an action to quiet title is one in equity. *Fox v. Moultrie*, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008). However, when the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action, the issue of title is legal. *Dargan v. Tankersley*, 380 S.C. 480, 483, 671 S.E.2d 73, 74 (2008). Therefore, in a case tried without a jury, the factual findings of a judge regarding title will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings. *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). This scope of review is equally applicable to the factual determinations of a master when, as in the present case, he enters final judgment. *May v. Hopkinson*, 289 S.C. 549, 554-55, 347 S.E.2d 508, 511 (Ct. App. 1986).

Major v. Penn Cmty. Servs., Inc., 395 S.C. 175, 180, 717 S.E.2d 70, 72 (Ct. App. 2011); *accord Hoyler v. State*, 428 S.C. 279, 290, 833 S.E.2d 845, 851 (Ct. App. 2019).

ARGUMENT

The Trial Court Did Not Err in Ruling on the Parties' Competing Claims to Quiet Title

A. The 2011 exchange of quitclaim deeds narrowed the width of Bostic Road and added to Lot 1, thus clarifying the boundary line between the two properties

In its brief, the County asserts that, in 2011, (1) there was uncertainty as to the exact placement of the boundary line between Bostick Road and Lot 1; (2) the respective owners of the two properties were free to agree as to the boundary line; and (3) the County and the Williams (who then owned Lot 1) settled the dispute by way of the exchange of quitclaim deeds. *See generally* Appellant Br. at 6-14 (Argument, Parts I.a. and I.b.).

As a general rule, it is indeed true that landowners sharing a boundary may settle any dispute regarding the location of the shared boundary by agreement. *See Lynch v. Lynch*, 236 S.C. 612, 624, 115 S.E.2d 301, 307 (1960) ("It is well settled that a boundary

line dividing the land of adjoining owners may be established by a parol agreement of such owners, and such becomes conclusive against the owners and those claiming under them.").

However, that theory was never asserted below and, thus, cannot be raised on appeal in the first instance. *See, e.g., Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 224, 647 S.E.2d 488, 492 (Ct. App. 2007) ("Because the issue was not raised before the master, the master did not get the opportunity to rule upon the question . . . . Accordingly, this issue is not preserved for our review and we may not address it." (citing, inter alia, *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004) ("An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court."))).

Alternatively, even if the boundary by agreement theory is deemed to have been asserted below and can be raised in this appeal, that is not, in fact, what actually happened here. Even assuming that the County and the Williams *intended* to rectify the disputed boundary line by way of the 2011 exchange of quitclaim deeds, *see* Appellant Br. at 7, the 2011 exchange of quitclaim deeds *did not in fact* establish the boundary line between their respective properties.

"When interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties' intentions," *Williams v. Tamsberg*, 425 S.C. 249, 259, 821 S.E.2d 494, 500 (Ct. App. 2018) (citing *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 420, 143 S.E.2d 803, 806 (1965)), but that intention "must be found within the four

corners of the deed," *id.* (quoting *K&A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 581, 682 S.E.2d 252, 262 (2009)).

In the instant case, in the first quitclaim deed, the Williams conveyed to the County "as much area as necessary, but in no event greater than three point three eight (3.38) feet of said part and parcel described as 'areas of confusion' on [the 2005 Gasque Plat], so as to clearly establish a fifty (50) foot right of way, identified as Bostick Road." Appellant Ex. E. Similarly, in the second quitclaim deed, the County conveyed to the Williams "as much area as necessary, but in no event greater than ten (10) feet of said part and parcel described as 'areas of confusion' on [the 2005 Gasque Plat], so as to clearly establish a fifty (50) foot right of way, identified as Bostick Road." Appellant Ex. F.

Nowhere in either of the quitclaim deeds is there any mention of a boundary dispute, nor any express establishment or location of any particular boundary line between the two properties. *See* Appellant Exs. E & F. Rather, the language used in the 2011 quitclaim deeds merely (but quite clearly) expresses an intent to narrow the width of Bostick Road from 60 feet to 50 feet, with the 10-foot portion removed from Bostick Road to be added to Lot 1, by an exchange of certain amounts of land. *See id.*

As noted by the County in its brief, an unambiguous deed must be given effect as written and without considering any extrinsic evidence. *See* Appellant Br. at 10-11. Accordingly, giving effect to the narrowed width of Bostick Road as per the 2011 exchange of quitclaim deeds, the effective boundary line created between Bostick Road and Lot 1 is precisely where Youmans and the trial court stated it to be. *See* Appellant

Ex. M ("Line as per Plat by David S. Youmans Additional 10' being quitclaimed"); Order, COL ¶ 7.

If and to the extent that there is any question of the parties' intent in this regard, that is a question for the finder of fact. *See Lynch*, 236 S.C. at 624, 115 S.E.2d at 307 ("It was for the jury to determine, in this case, whether any boundary lines had been established pursuant to a parol agreement." "We think that the learned Circuit Judge was correct in submitting to the jury the issues made by the pleadings and the testimony. The evidence was in dispute and more than one inference could be drawn therefrom. These questions were for the determination of the jury.").

In the instant case, the finder of fact was the master in equity, who found that the 2011 quitclaim deeds intended to reduce the width of Bostick Road by 10 feet and to add that 10 feet to Lot 1. *See* Order, FOF ¶ 16. And, because there is evidence to support that factual finding, it must stand on appeal. *See Major*, 395 S.C. at 180, 717 S.E.2d at 72; *Hoyler*, 428 S.C. at 290, 833 S.E.2d at 851.

In its brief, the County correctly states the rule of law that when a plat is mentioned in a deed, the plat is incorporated into the deed for purposes of describing the property conveyed. *See* Appellant Br. at 7-8. Indeed, when "identifying the land intended to be conveyed, it is permissible to rely on extrinsic evidence if it is necessary to clarify a property description." *Hoyler*, 428 S.C. at 295, 833 S.E.2d at 854. Thus, if the plat's description of the property effectively makes the deed ambiguous as to the precise location of the boundary, then it is proper to consider extrinsic evidence to resolve that ambiguity, including expert testimony. *See, e.g., id.* at 297, 833 S.E.2d at 855.

In the instant case, the trial court heard expert testimony from the County's expert (Gasque) as well as Summerall's experts (Youmans and Summerall). *See supra* nn. 1-3. Clearly, it was the trial court's job to determine who should win this proverbial "battle of experts," and the trial court chose to credit Summerall's experts rather than the County's expert. *See* Order, COL ¶¶ 6-7; Order ¶ 2. Given the applicable standard of review, the trial court's decision on this point must stand. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 652-53, 661 S.E.2d 791, 796 (2008) (deferring to the circuit court's credibility determinations regarding the timeliness of a motion for reconsideration and thus declining to reverse the circuit court's decision); *Reed v. Ozmint*, 374 S.C. 19, 24, 647 S.E.2d 209, 211 (2007) (noting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony).

As previously noted, the County correctly states the rule of law that when a plat is mentioned in a deed, the plat is incorporated into the deed for purposes of describing the property conveyed. *See* Appellant Br. at 7-8. Yet it is clear that the plat itself cannot convey any land or otherwise modify the boundary lines; only a deed can do that. *See Dargan v. Tankersley*, 380 S.C. 480, 483-87, 671 S.E.2d 73, 74-76 (2008) (adjoining landowners did not acquire legal title to disputed parcel simply because predecessor included parcel in plat he prepared and then purported to transfer the property).

So, if and to the extent that the County asserts that 2011 quitclaim deeds purported to convey land identified from the plat's "areas of confusion," the parties

could only convey what they in fact owned and what is in their respective chains of title. *See Mulherin-Howell v. Cobb*, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005) ("A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey." (citing *Martin v. Ragsdale*, 71 S.C. 67, 77, 50 S.E. 671, 674 (1905))); *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 313, 433 S.E.2d 875, 880-81 (Ct. App. 1992) ("One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." (citing *Belue v. Fetner*, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968) (stating a deed cannot convey an interest which the grantor does not have))); *Cummings v. Varn*, 307 S.C. 37, 42, 413 S.E.2d 829, 832 (1992) ("No deed can convey an interest which the grantor does not have in the land described in the deed, even though by its terms the deed may purport to do so.").

In its brief, the County notes that the grantor's intent is of primary significance when construing a deed. *See* Appellant Br. at 8, 10. While that is a true statement of the law generally, "[i]t is the actual boundary and not the representation of it on the plat that must control." *Garrett v. Locke*, 309 S.C. 94, 98-99, 419 S.E.2d 842, 845 (Ct. App. 1992) (citing *Atkinson v. Anderson*, 14 S.C.L. (3 McCord) 223 (1825)); *see also Dargan*, 380 S.C. at 483-87, 671 S.E.2d at 74-76 (adjoining landowners did not acquire legal title to disputed parcel simply because predecessor included parcel in plat he prepared and then purported to transfer the property).

Therefore, the trial court did not commit reversible error in resolving the parties' competing claims to quiet title to the boundary line between their respective properties.

B. The trial court clearly recognized and considered the 2011 exchange of quitclaim deeds in resolving the instant quiet title action

In its brief, the County asserts that the trial court failed to recognize or address the parties' intent with respect to the 2011 quitclaim deeds. *See generally* Appellant Br. at 14-18 (Argument, Part I.c.).

Undisputedly, however, the trial court clearly recognized and addressed the 2011 quitclaim deeds. *See* Order, FOF ¶ 13 ("In 2011, [the] County agreed with [the Williams] to narrow Bostick Road to 50 feet. Quitclaim deeds were exchanged" referring to the 2005 Gasque Plat.); Order, FOF ¶ 16 ("By agreeing to reduce the right of way to 50 feet, [the] County intended to add the reduced footage (10 feet) to Lot 1, now owned by [Summerall]."); *see also* Order, COL ¶ 9 ("Any [FOF] . . . that is also a [COL] is so adopted.").

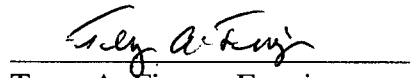
Furthermore, the trial court's ultimate ruling was based in part on the 2011 quitclaim deeds in that it gave effect to the narrowing of Bostick Road by 10 feet, with such 10 feet added to the western boundary of Lot 1. *See* Order, COL ¶ 7; *see also supra* Part A (discussion in text).

Therefore, it is clear that the trial court recognized and addressed the 2011 quitclaim deeds.

CONCLUSION

In light of the foregoing arguments and authorities cited, it is clear that the trial court did not commit reversible error in this matter. WHEREFORE, Summerall respectfully requests that this Court affirm the judgment below in all respects and grant Summerall any other and further relief the Court deems just and equitable.

Respectfully submitted,



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Timothy A. Summerall, **Respondent,**

v.

Beaufort County, **Appellant.**

PROOF OF SERVICE

I hereby certify that on this March 2, 2020, I have served the Initial Brief of Respondent upon the Appellant Beaufort County by depositing a copy of same in the U.S. Mail, first-class postage prepaid, addressed to its attorney of record, Christopher L. Murphy, Resnick & Louis P.C., Suite 130, 146 Fairchild Street, Charleston, SC 29492.

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March 2, 2020

VIA US MAIL

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

Dear Ms. Kitchings,

I hope you are well. Please find the enclosed Initial Brief of Respondent in the above-captioned matter. Also enclosed is an original and copy of a Proof of Service indicating service upon Appellant's attorney of record, Christopher L. Murphy, Esquire. I would appreciate your filing the Proof of Service and returning a copy to me in the envelope provided for your convenience.

Very truly yours,

FINGER, MELNICK & BROOKS, P.A.

Terry A. Finger, Esq.

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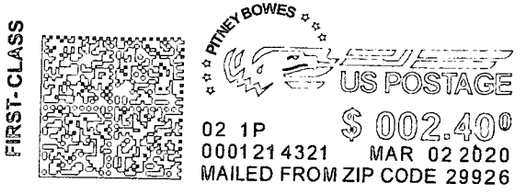

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