THE STATE OF SOUTH CAROLINA
In the Supreme Court

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May 22 2020

S.C. SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

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Trial Court Case No.
2015-CP-10-3550

Appellate Case No. 2019-002031

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Richard Ralph and Eugenia Ralph.....Respondents,

v.

Paul Dennis McLaughlin and Susan Rode McLaughlin.....Appellants.

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# BRIEF OF APPELLANTS

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## STATEMENT OF ISSUES ON APPEAL

I. THE COURT OF APPEALS ERRED IN FOCUSING ON LIMITED FACTS IN THE RECORD ON APPEAL AND NOT ON THE ENTIRETY OF THE CIRCUMSTANCES SURROUNDING THE MCLAUGHLINS DECISION TO BUILD THEIR HOUSE ON WHAT THEY FULLY BELIEVED WAS AN ABANONED EASEMENT AS SHOWN ON THE PLAT FROM FORSBERG ENGINEERING AND SURVEYING, INC., AND WITH WHICH THE JURY AGREED AND FOR WHICH THERE WAS EVIDENCE FOR THEM TO DETERMINE THE RESPONDENTS JUSTIFIABLY RELIED AND WHICH THE JURY BELIEVED IN AS DEMONSTRATED BY THE VERDICT RENDERED AT TRIAL

II. THE COURT OF APPEALS ERRED IN EXPLANDING THE LAW OF THE CASE DOCTRINE AS SET FORTH IN JUDGE COOPER'S JUNE 7, 2016, ORDER GRANTING SUMMARY JUDGMENT TO THE SEABROOK ISLAND PROPERTY OWNERS ASSOCATION WHICH MADE A DIFFERENT DETERMINATION AS TO MATTERS DISTINCTLY DIFFERENT AND NOT CONTEMPLATED IN THAT ORDER AND WHICH WAS ULTIMATELY TRIED BEFORE THE JURY.

## STATEMENT OF THE CASE

The crux of the case below and in this appeal involves a dispute as to an easement on Seabrook Island, South Carolina (A. 1047). The McLaughlins removed that easement and the Ralphs contended the removal led to drainage issues on their property. *Id.* At trial, the jury awarded nominal damages of $1,000.00. (A 19-21). In October of 2002, the McLaughlins acquired Lot 22 on Baywood Road to the McLaughlins. (A. 1048 -1049) At the time, a new plat had been recorded (the "Forsberg Plat") showing an abandonment of the easement, which, the McLaughlins believed had been accomplished from a statement from their sellers and statements from the Seabrook Island Property Owners Association ("SIPOA") *Id.* Ultimately, the McLaughlins built on their Lot, removing the easement, and going forward with construction with their plans being approved by SIPOA. *Id.* at 1049.

The Ralphs sued the McLaughlins seeking actual and punitive damages for the removal of the drainage easement. (A. 1051, A. 34-49) The McLaughlins answered and filed a third-party Complaint against SIPOA (A. 50-83) SIPOA answered (A. 85-96) Two years later, the Ralphs filed an amended complaint seeking damages for trespass, punitive damages, and emotional distress. (A. 97-106).

After dismissing the matter pursuant to Rule 40(j) SCRCivP and restoring it, ultimately, motions for summary judgment by all parties were heard by the Honorable G. Thomas Cooper, Jr. (A. 1-2; A. 3-4; A. 5-16) Judge Cooper found there was no evidence to show SIPOA made any promises to the McLaughlins upon which they could rely. (A. 12) That Order was not appealed.

Ultimately, the case was tried before the Honorable Roger M. Young, Sr., from January 23 to January 26, 2017. (A. 22-31).

Judge Young granted a directed verdict to the McLaughlins as to punitive damages and intentional infliction of emotional distress finding that there was not sufficient evidence of willfulness to send those causes of action to the jury. *Id.* Judge Young stated that Mr. McLaughlin did not believe he was acting malevolently, certainly not to the level of clear and convincing evidence, so he grated the motion for directed verdict. (A. 1053).

The jury deliberated the case for over five hours and returned their verdict for $1,000.00 in nominal damages. *Id.* The Ralphs filed a motion for a new trial *nisi additur*, or, in the alternative, a new trial as to damages, or, in the alternative, a new trial absolute. *Id.* Judge Young denied those motions in his Order filed March 2, 2017. Appeals followed.

In their Order dated August 21, 2019, the Court of Appeals eviscerated the jury's ruling and Judge Young's Order denying the new trial motions. (A. 1047 – 1071).

## ARGUMENT

**I. The Court of Appeals erred in focusing on limited facts in the Record and not on the entirety of the circumstances surrounding the Respondents' decision to build their house on what they fully believed was an abandoned easement as shown on the plat from Forsberg Engineering and Surveying, Inc., and with which the jury agreed and for which there was evidence for them to determine the Respondents justifiably relied and which the jury believed in as demonstrated by the verdict rendered at trial?**

In October of 2002, the McLaughlins took title to their property by deed which referenced, and incorporated, a Plat by Forsberg Engineering and Surveying, Inc., entitled "Plat Showing Abandonment of an Existing 20' Drainage Easement Lot 22 Block 23 Town of Seabrook Island Charleston South Carolina" dated January 17, 2002 (A. 388; A. 381-386). Both the McLaughlins' predecessors in title and SIPOA informed the McLaughlins that the drainage easement had been abandoned. (A. 757; A. 763-764; A. 766) The Forsberg Plat showed that the easement area had been abandoned. (A. 388)

Some months earlier, on May 20, 2002, the SIPOA Board of Directors took a vote, recorded in their minutes, to abandon the easement not only on Lot 22, but on Lots 21 to 28 on Baywood Drive. (A. 81) SIPOA's Directors

> made a motion to give the easement back to the property owner with the understanding that the property owner pay all cost necessary to remove the easement. Mr. Giardino seconded. The motion passed by unanimous vote.

(*Id.*)

Part of the easement was a drainage pipe that ran under Lots 21 to 28 on Baywood Drive. (*Id*). The easement as described on the plat from E. M. Seabrook was in favor of the Seabrook Island Property Owners Association and not in favor of the individual Lot owners. (A. 388, A. 22-31; R. A. 547-565). It was SIPOA's easement and SIPOA's to abandon. The McLaughlins' predecessors in title to Lot 22, the Gantzes, made sure that a new plat was recorded as approved by SIPOA and the Town of Seabrook Island showing the abandonment of the easement by SIPOA. (A 388; A. 381-386) The McLaughlins bought Lot 22 with the full assurance and belief that the easement had been abandoned as shown on the new plat. (A. 757, A. 763-764; A. 766, A. 388)

In submitting their house plans to SIPOA's Architectural Review Board, the plans were approved unanimously. (S.C. Court App., Opinion No. 5681)(A. 702, A. 83.) At the time of the submittal, SIPOA advised that the McLaughlins were to assume all **financial** responsibility for the easement, which SIPOA had abandoned. (A. 83)

Prior to their building, the McLaughlins attempted to discuss issues with their neighbors to implement a plan for another drainage way as proposed by the Ralph's later retained expert engineer Robert George. (A. 246). This plan was not supported by the Ralphs, even though the

testimony at trial proved that the Ralphs have always had standing water on their property during any and all rain events. (A. 22-31; A. 609)

The McLaughlins always believed that the easement had been abandoned. The Ralphs own expert witness as to title and the easement, Howard Yates, testified and confirmed at trial that the Forsberg Plat also became part of the McLaughlins' deed showing the abandonment of the easement (A. 21-31). Mr. Yates further testified that the easement was originally in favor of SIPOA. *Id.* Judge Young certainly consider these facts in his Order Denying Plaintiffs' Motion for New Trial (A. 21-31). The SIPOA Board voted to abandon the easement on Lots 22 to 28 on Baywood Drive and SIPOA signed off on the Forsberg plat. (A. 388). The facts show that there was no consciousness of wrongdoing demonstrated by the Defendants at any time where the McLaughlins testified consistently that they relied on SIPOA and on the documents presented to them stating that the easement had been abandoned.

Judge Young further stated:

> And punitive damages are out. I, again, don't think this is a case in which there has been a rise to clear and convincing evidence that he [Mr. McLaughlin] acted intentionally, knowing that he did not have the right to do that.
>
> He knew it was disputed. He had been arguing about it for, apparently, a couple of years, but it didn't get resolved to his satisfaction, to anybody's satisfaction, so he moved forward with what he thought was his rights. I don't think that rises to the level of punitive damages, so you won't be able to argue punitive damages.

(A 805-806).

Yet, despite this clear evidence, the Court of Appeals has determined that there is sufficient evidence of willfulness and has turned this matter into what would essentially be a damages hearing upon remand. That Court's decision totally ignored the jury's determination in this case.

Ultimately, the jury agreed with Judge Young and the McLaughlins, and, the Court of Appeals invaded that purview in spite of its own precedent and that of this Court which state there should be no invasion of the purview if there is ANY evidence to support the same. *See Curtis v. Blake*, 392 S.C. 494, 709 S.E.2d 79 (2011); *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (1973); *Green v. Fritz*, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003); *Vinson v. Hartley*, 324 S.C. 389, 477 S.E. 2d 715 (Ct. App. 1996); *Morris v. Jensen*, 309 S.C. 153, 420 S.E.2d 710 (Ct. App. 1992); *Umhoefer v. Bollinger*, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989). All of these facts not only support the jury's verdict but also Judge Young's well-reasoned and thorough Order denying the motion for a new trial (A. 22-31, A. 508-511)

**II: The Court of Appeals erred in expanding the Law of the Case doctrine as set forth in Judge Cooper's June 7, 2016, Order granting summary judgment to the Seabrook Island Property Owners Association which made a determination as to matters distinctly different and not contemplated in that Order and which were ultimately tried before the jury.**

The Court of Appeals expanded Judge Cooper's Order granting summary judgment to the former third party defendant, the Seabrook Island Property Owners Association to an extent that it now establishes liability on the McLaughlins where that Order did not constitute a final ruling by and between the remaining parties as being conclusive.

On June 7, 2016, the Honorable G. Thomas Cooper, Jr., entered his order granting the third party defendant SIPOA judgment as a matter of law as to the cause of action pending against it for **indemnity** by the McLaughlins. (A 5-12) Nowhere in his Order did Judge Cooper make a ruling as to what he quoted as being "trespass" by the McLaughlins on the Ralphs' property or any interest on what the McLaughlins thought was the abandoned drainage easement in favor of SIPOA. *Id.* The Order never once states that the McLaughlins committed any trespass. *Id.* The

Order rules that the Ralphs' claim was not barred by the statute of limitation and that the claim against SIPOA for indemnification had to be dismissed as to a lack of reliance. In fact, Judge Cooper specifically omitted the claim by the Ralphs against the McLaughlins from his ruling having written the following:

> However, regardless of the disposition of the Ralphs' claim against the McLaughlins, because the McLaughlins cannot produce evidence of an unambiguous promise or representation of SIPOA authorizing them to remove the pipe in December 2008, their third-party claim against SIPOA must be dismissed.

*Id.*

Judge Cooper wrote "...regardless of the disposition of the Ralphs' claim against the McLaughlins..." *Id.* He had to write that as there was no final determination of the issue of trespass or the issue of willfulness that would lead to a submission of punitive damages to the jury at the time of trial.

Judge Cooper then went on to set forth the failure of the McLaughlins to meet the elements of promissory estoppel. *Id.* This is the extent of his ruling. It has no bearing on the issue of trespass or the McLaughlins' firmly held belief that the easement had been abandoned and they had a right to move forward based upon representations made to them.

Where separate judges issue un-appealed orders on distinctly different issues, the law of the case does not apply. (Opinion No. 5681). *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). There was no final determination of the disposition of the Ralphs's claim and the law of the case only applies "to an order or ruling which finally determines as substantial right." *Id.* at 573, 743 S.E.2d at 785 (2013). There was no ruling as to the trespass or intentional infliction of emotional distress: the only two causes of action presented against the McLaughlins. One judge did not overrule another in this matter. One judge allowed

the appropriate claims to go to the jury. The Order did not relate to the only issue in the case by and between the Ralphs and the McLaughlins: the alleged trespass. There is not one ruling in that order regarding trespass or the lawful or unlawful acts of the McLaughlins in relation to the Ralphs' property. It is simply inapplicable to the Ralphs' causes of action against the McLaughlins. It is not the law of the case as to these parties as it makes no ruling as to the matters brought by the Ralphs. In fact, at the same time, Judge Cooper denied both the Ralphs' and the McLaughlins' motions for summary judgment as to the issues between them. (A. 5-12). Judge Cooper noted in those orders "there are disputed issues of fact regarding Plaintiffs' claims" and "there are disputed issues of fact regarding Defendants' claims." *Id.* It was these very same disputed issues of fact that were tried before Judge Young and which were ultimately determined by the jury.

As Judge Young noted

> Well, Judge Cooper's order between them....[b]etween the defendants and the property owners association is not binding on this jury's finding. I don't know how to put it any other way. We're having this argument, but I don't understand why we're having it necessarily. There's a genuine issue in my mind whether or not he was acting lawfully. I'm letting you go forward and argue to the jury that he was not acting lawfully....

(A. 803).

Judge Cooper's ruling was limited to the third-party complaint only and the reliance of the McLaughlins in order to hold SIPOA liable. Period. The Court of Appeals extrapolated the ruling to make the ultimate decision of liability, which was an issue for the Jury to decide, and, which they decided. (A. 19) There is no determination of the trespass, as that is ultimately an issue of fact for the jury to determine. This was not an error requiring the Court of Appeals to overturn Judge Young's Order denying the motion for a new trial or to overturn the Jury's verdict. There was not a complete adjudication of the matters by Judge Cooper to make his

ruling the law of the case where he also found there to be issues for trial by and between the Ralphs and the McLaughlins. (A. 5-18). Judge Cooper made no ruling as to the Ralphs' cause of action for trespass, and Judge Young properly allowed the jury to consider the McLaughlins' belief that they had the right to rely on SIPOA in building their house. Judge Cooper specifically excepted those claims in his Order. (A. 5-12)

Further, ultimately, the Ralphs won in the Circuit Court with the jury finding a trespass and awarding damages, albeit nominal damages. Judge Young made a charge to the jury on nominal damages, which charge was not objected to by the Ralphs. (A. 923, A. 508-511; A. 927; A. 21, A. 931-934)

Further, Judge Young rightfully granted a directly verdict as to punitive damages despite the Court of Appeals' determination that was an issue for the jury and not to be bootstrapped from Judge Cooper's Order as to SIPOA. A duty of inquiry as to easement rights would not have been something that the McLaughlins would have ever been charged with as the public record showed a plat with an abandonment of the easement as the latest plat in their chain of title (A 22-31; A 388, A. 381-386) This Court of Appeals now creates a duty on the part of purchasers to inquire as to the status of easements in a chain of title. (Op. No. 5681). The McLaughlins testified that they were told by the Gantzes, their sellers, that SIPOA had abandoned the easement . (A. 375-379). The evidence further showed that the SIPOA voted to abandon the easement. (A. 81) SIPOA stated that the McLaughlins would bear **financial** responsibility for removing the drain pipe. (R. A. 83)(emphasis added) SIPOA approved their house plans. *Id.* They fully believed the easement was gone, abandoned, removed. Judge Young was in the courtroom for the entirety of the trial and, based upon that, he knew that there was no willful conduct on the part of the McLaughlins' despite the Plaintiffs' best attempts to

paint them as willful and wonton in their conduct. Even their own experts conceded that the SIPOA had abandoned the easement and the new plat from Forsberg was part of their deed. (A. 715, A. 735, A. 558, A. 22-33)

By necessity, the McLaughlins' belief they were acting within their rights does preclude a finding of reckless behavior to allow for a submission to punitive damages. Unlike in the case of *Hollis v. Stonington Dev., LLC,* 394 S.C. 383 714, S.E.2d 904)(Ct. App. 2011), which the Court of Appeals referenced in its Opinion and which the McLaughlins referenced in their Brief, there was no consistent, repeated misconduct as to violations of regulations regarding intrusion into a neighbor's property and notice from governmental authorities as to the violations of regulations regarding stormwater. *Id.* In *Hollis*, there was notice given and the defendant there attempted to bully and threaten the plaintiff. *Id.* There was no testimony of bullying or threatening here. The McLaughlins built their house as they thought they were allowed to do so. The jury, which was not overburdened nor confused as demonstrated by their deliberations and specific jury form, was unlikely to have awarded any punitive damages anyway giving only a nominal damages award. (A. 928; A. 930-931).

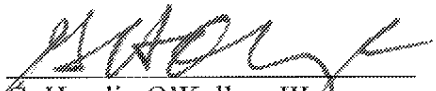
As the Court of Appeals Opinion now stands, it has tried the case again in favor of the Ralphs so that only a damages hearing will take place, which is not substantial deference to the jury's verdict in any way shape or form. *Green v. Fritz*, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003). It further goes against the sound discretion of the trial court in refusing to grant a new trial. *Vinson v. Hartley*, 324 S.C. 389, 477 S.E. 2d 715 (Ct. App. 1996); *Morris v. Jensen*, 309 S.C. 153, 420 S.E.2d 710 (Ct. App. 1992); *Umhoefer v. Bollinger*, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989). Both of which go against the long-standing precedent of this Court and the Court of Appeals.

## CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Court of Appeals in this matter and re-instate the jury's verdict.

Respectfully submitted,

Mt. Pleasant, South Carolina
May 22, 2020



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