

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

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SC Court of Appeals

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

Beaufort County,Appellant,
v.

Timothy A. Summerall,Respondent.

APPELLANT'S FINAL REPLY BRIEF

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STATEMENT OF THE CASE

Appellant adopts and incorporates by reference the Statement of the Case and Facts presented in their Initial Brief.

ARGUMENT¹

I. The respondent's argument that the issue regarding the intent of the parties when exchanging the 2011 Quitclaim deeds was not raised in the court below clearly fails based on the evidence presented.

The respondent argues that the issue of a parol agreement between the owners was not raised below and therefore, it cannot be raised on appeal. The respondent labels it as a parol agreement issue but in essence his argument is that the intent of the parties during their exchange of 2011 Quitclaim deeds was not raised in the court below.

It is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997).

It is clear from the transcripts of various witnesses that the issue of the intent of the parties was raised throughout the case below. Furthermore, the Appellant raised the issue in its Motion for Reconsideration where one of its main arguments was that 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 those deeds. The respondent fails to address the fact that the Appellant's Initial Brief quotes testimony provided by the actual Respondent himself regarding what he believed the intent of the parties were when the previous owner and Beaufort County

¹ The Appellant adopts and incorporates by reference those arguments by reference those arguments raised in their Initial Brief. For the sake of brevity, Appellant offers the arguments herein as a limited reply to those issues presented in the Respondent's Initial Brief

exchanged the Quitclaim deeds back in 2011. 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. **(R. p. 0200, lines 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. **(R. p. 0219, lines 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.

(R. p. 0202, lines 5-25).

The respondent's own testimony clearly shows that the issue of intent was properly raised and asserted by the Appellant in the Trial Court below.

Furthermore, Attorney Josh Gruber represented Appellant back in 2011 and testified at the in the Trial Court below. 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. **(R. p. 0219, line 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.

(R. p. 0061, lines 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." **(R. p. 0066, lines 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." **(R. p. 0070, lines 8-10).**

In his cross examinations, Mr. Gasque, the Appellant's expert, 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. **(R. p. 0122, lines 5-14).**

Here, the Appellant simply argues that the Trial Court below failed to consider the overwhelming clear weight of the evidence that shows the intent of the parties was to establish a property line referred to as the 'quitclaim line'. The Trial Court ignored all evidence in the record as to the intent of the parties which violates the laws of South Carolina. Thus, we believe that the findings of law should be reversed. Furthermore, the Appellant adopts and incorporates by reference all arguments as to the intent of the parties raised in their Initial Brief.

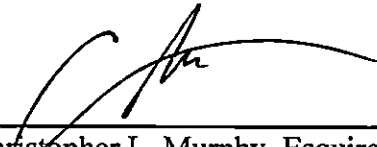
II. The respondent's argument that the 2011 Quitclaim deeds fail to address or mention the establishment of a boundary dispute, nor express establishment or location of any particular boundary line between the two properties is immaterial.

The respondent essentially is arguing that just because the deeds failed to mention the boundary line dispute that the Quitclaim deeds have no effect on the boundary line. The respondent admits that the language used in the Quitclaim deeds conveys enough property to the Appellant and the previous owners, the Williams, as to clearly establish a fifty (50) foot right of way, identified as Bostick Road. The Respondent cannot in one turn of phrase allege that no boundary line was adjusted with the Quitclaim deeds but then turnaround and admit that property was conveyed between the parties. Any time a portion of property is conveyed between two parties that own adjoining lots the conveyance without question adjusts the boundary lines. Common sense tells you that one simply cannot convey a piece of property to another adjoining property owner without altering the boundary line. Therefore, the Respondent's argument that just because there was no mention of the boundary line in the 2011 Quitclaim deeds means that the property line did not change is purely without merit. Furthermore, the Appellant adopts and incorporates by reference all arguments as to the boundary line location raised in their Initial Brief.

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.

Respectfully submitted,



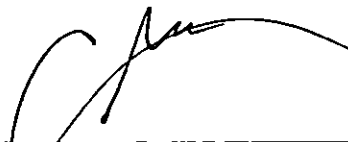
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June 7, 2020

Certificate of Counsel

The undersigned hereby certifies that the Appellant's Final Reply Brief contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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