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July 8, 2020

Ms. V. Claire Allen
S.C. Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Thelma Smalls David, et al. vs. Donna Lee Cox, et al.
Appellate Case No.: 2020-000955

Dear Ms. Allen:

Pursuant to your letter dated July 7, 2020, enclosed is a clocked in copy of the Final Order of the Honorable Mikell R. Scarborough dated January 28, 2020 along with a check in the amount of $275.00 which includes $25.00 for the balance due for the motion fee.

With kindest regards, I am

Very truly yours,

Arthur C. McFarland

ACM/vlf

Enclosures:

cc: G. Dana Sinkler, Esquire
Ainsley Fisher Tillman, Esquire
Riley A. Bradham, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2015-CP-10-7000

THELMA SMALLS DAVID, BERNARD BROWN, BENJAMIN SMALLS, EDWARD BROWN, NICOLETTE JAMES, ROBERT BROWN, THOMAS BROWN, and DEBRA COMMODORE,

Plaintiffs,

v.

DONNA LEE COX, ROBERT R. COX, JR., SHAWN THACKERAY, and LOWCOUNTRY HIGHLANDERS FARM, LLC,

Defendants,

BOHICKET FARMS, LLC,

Intervenor.

FINAL ORDER

This case came before this Court for trial without a jury, beginning on October 22, 2019. After the Plaintiffs had completed the presentation of their evidence, the Defendants Donna Lee Cox and Robert R. Cox, Jr. (the "Coxes") moved for dismissal, pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure, on the ground that upon the facts and the law the Plaintiffs had shown no right to relief.

Upon thorough consideration of the evidence and arguments of counsel, this Court, as trier of the facts, grants the Defendants' Motion and makes the following factual determinations and judgments of law.

FINDINGS OF FACT

This lawsuit involves the question of the existence of an easement. The property at issue is located off of Harts Bluff Road and Bears Bluff Road, on Wadmalaw Island, in the County of Charleston, South Carolina. There are eight named Plaintiffs in this case; not all of them are related to one another by blood, and nor is there privity of title among them. The evidence demonstrates the following:

- Plaintiff Thelma Smalls David ("David") owns two parcels of land, identified as TMS No. 196-00-00-133 and 196-00-00-134 (Defendants' Exhibit 31). David's property is designated as lot L and Cemetery Lot on a plat entitled, *Final Plat to Subdivide 20.47 Acres Estate of Daniel Brown*, recorded in Plat Book EJ at Page 896 (the "Daniel Brown Subdivision Plat") (Plaintiffs' Exhibit 7).
- Plaintiff Benjamin Smalls owns two parcels of land, identified as TMS Nos. 196-00-00-129 and 196-00-00-147. (Defendants' Ex. 31). Smalls' property is designated as lot G on the Daniel Brown Subdivision Plat.
- Plaintiff Nicolette James owns two parcels of land, identified as TMS Nos. 196-00-00-135 and 196-00-00-136. (Defendants' Ex. 31). James' property is designated as lots M and N on the Daniel Brown Subdivision Plat.
- Plaintiff Debra Commodore owns a parcel of land, identified as TMS No. 196-00-00-128. (Defendants' Ex. 31). Commodore's property is designated as lot F on the Daniel Brown Subdivision Plat.

- Plaintiff Bernard Brown owns two parcels of land, identified as TMS Nos. 196-00-00-132 and 196-00-00-137. (Defendants' Ex. 31). Bernard Brown's property is designated as lot J and lot O on the Daniel Brown Subdivision Plat.
- Plaintiffs Thomas Brown and Edward Brown have an interest, as beneficiaries of a trust, in the parcel of land once belonging to Frank Brown and identified as TMS No. 196-00-00-012, as set forth on a deed marked as Defendants' Exhibit 11. The deed indicates that the trustees of the trust are Carlnell Brown and Marc Brown, who are not parties to this lawsuit. Edward Brown testified that Plaintiffs Bernard Brown and Robert Brown have an heirs' interest in the same property.
- Defendants Robert Cox and Donna Cox (the "Coxes") own a parcel of land, identified as TMS # 196-00-00-023. (See Defendants' Exhibit 31).

For ease of understanding throughout this opinion, Plaintiffs Thomas Brown, Edward Brown, and Robert Brown will be referred to collectively as the "Frank Brown Plaintiffs," and Plaintiffs Thelma David, Bernard Brown, Benjamin Smalls, Debra Commodore, and Nicolette James will be referred to as the "Daniel Brown Plaintiffs."[1]

The Coxes' property consists of approximately 30 acres of largely rural land, on which the Coxes reside. There are several dirt roads on the property; the Plaintiffs claim easement rights to one of them (the "Blue Road"). Edward Brown testified that, prior to 1987, he and various other people used to cross the Coxes' parcel by another road (the

[1] Although Daniel Brown and Frank Brown have the same last name, the evidence demonstrates that they were not related to one another by blood. For purposes of this case, having the same last name "Brown" does not necessarily mean that two people are related.

"Old Red Road").[2] However, in 1987, Plaintiff Edward Brown and his brother, James Brown, met with Defendant Donna Cox's now-deceased husband, Henry Lee, to discuss whether and where the Plaintiffs could cross the Cox's property. Lee and Brown agreed that they would, together, build the Blue Road that is the subject of this lawsuit, and that Brown could use it to access his field (located on the Frank Brown tract, TMS No. 196-00-00-012). Thereafter, the Old Red Road was no longer used, and the Plaintiffs used the Blue Road, in accordance with the agreement between Lee and Brown.

James Brown used the Blue Road for farming purposes until he died in 2015. Various members of the Frank Brown family also used the Blue Road to access TMS No. 196-00-00-012 for deer hunting, gardening, and firewood cutting. Brown also testified as to the existence of a cemetery on the property owned by Thelma David, stating that the Blue Road was used for burials. Photographs of the graves in the cemetery were admitted into evidence as Plaintiffs' Exhibit 17.

The Blue Road itself was described in detail by Edward Brown in his testimony at trial, and numerous photographs of the road were put into evidence. (Plaintiffs' Exhibit 16). Brown drew pictures of the Blue Road, which were admitted into evidence as Plaintiffs' Exhibit 3 and Defendants' Exhibit 28. Several recorded plats were also admitted into evidence, which plats depict a farm road, but which do not indicate that the depicted farm road is access to the platted property. (Plaintiffs' Exhibit 7; Plaintiffs'

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2 The two different roads are referred to as the "Red Road" and the "Blue Road" because of the colors used by Edward Brown to depict the routes of the two roads on an exhibit. (Defendants' Trial Exhibit 28).

Exhibit 9; Defendants' Exhibit 15). Brown testified that the Blue Road would "benefit" numerous parcels, and that the road continues over and past the Coxes' property, across numerous lots, to access various non-adjacent parcels of land, including the cemetery and the lot owned by Plaintiff Debra Commodore. The evidence as to where the Blue Road terminates is conflicting, but it is clear that it does not have a terminus on the Frank Brown Plaintiffs' property (i.e., TMS No. 196-00-00-012).

The Frank Brown Plaintiffs' property once stretched all the way across Harts' Bluff Road, to Wadmalaw Sound. Over the course of years, the Frank Brown Plaintiffs, and their predecessors in title, gradually cut off direct access to Harts' Bluff Road by subdividing their property. (*See* Defendants' Exhibits 13, 14). In the course of one of those subdivisions, the property was platted, on a plat recorded with the Charleston County Register of Mesne Conveyances in Plat Book BW at Page 11. The plat depicts a 50' Right of Way, named Back-a-Wood Road, which states: "We hereby dedicate the 50' road right-of-way to the use of the property owners. The owners and their heirs and assigns guarantee its maintenance." (Def. Ex. 14). This dedication is signed by Plaintiff Edward Brown, his brother Carl Brown (trustee of the Frank Brown estate), and an heir of Daniel Brown, Lillian Washington.

The Daniel Brown Plaintiffs acquired their property with reference to a plat recorded with the Charleston County Register of Mesne Conveyances in Plat Book EJ at Page 896. (Plaintiffs' Exhibit 7). The plat depicts two ingress-egress easements, one stretching from Back-a-Wood Road (to Harts Bluff Road in the North) and the other from Geneva Shaw Road (to Bears Bluff Road in the South), and it states: "We hereby dedicate

the NEW 20' INGRESS-EGRESS EASEMENTS to the use of the property owners forever. Owners of these lots and their heirs and assigns guarantee its maintenance until such time it is accepted into the public maintenance system." (*See* Pl. Ex. 7). This dedication is signed by Plaintiffs Thelma Smalls and Benjamin Smalls, among others.

LEGAL STANDARD

Pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure, "[a]fter the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." "Rule 41 allows the judge as the trier of facts to weigh the evidence, determine the facts, and render a judgment against the plaintiff at the close of his case if justified." *Johnson v. J.P. Stevens & Co., Inc.*, 308 S.C. 116, 417 S.E.2d 527, 529 (1992), *citing* H. Lightsey & J. Flanagan, *South Carolina Civil Procedure* 368 (1985). Involuntary dismissal, or non-suit, is appropriately granted when the plaintiff fails to meet his burden of proof. *Id.*

The question of whether an easement exists is a factual question in an action at law. *Bundy v. Shirley*, 412 S.C. 292, 302, 772 S.E.2d 163, 168 (2015). Appellate courts will uphold a master's factual findings if there is any evidence to support the decision. *Gooldy v. Storage Center-Platt Springs, LLC*, 811 S.E.2d 779, 422 S.C. 332 (2018).

The distinction between an appurtenant easement and an easement in gross involves the extent of a grant of an easement, as opposed to the creation of an easement. *See Windham v. Riddle*, 370 S.C. 415, 418, 635 S.E.2d 558, 559 (Ct. App. 2006) (characterizing the determination of whether an easement was appurtenant or in gross as a

determination of the extent of a grant of an easement), *aff'd*, 381 S.C. 192, 672 S.E.2d 578 (2009). The determination of the extent of a grant of an easement is an action in equity. *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997). The trial judge's determinations in an action in equity will not be overturned unless he commits error in his findings. *Pinckney v. Warren*, 344 S.C. 382, 544 S.E.2d 620 (2001).

APPLICATION OF LAW TO FACTS

I. The Plaintiffs have not met their burden to prove an easement by necessity.

The elements of a claim for easement by necessity are: (1) unity of title; (2) severance of title; and (3) necessity. *Paine Gayle Props., LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528, 539 (Ct. App. 2012). "To establish unity of title, the owner of the dominant estate must show that his land and that of the owner of the servient estate once belonged to the same person." *Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002). "Severance of title means that title to a larger tract was 'severed' by conveyance of a part to the plaintiff's predecessor in title and of a part to the defendant's predecessor in title; 'they both claim, from a common source, different parts of the integral tract, which necessarily assumes a severance.'" *Id.* (*quoting Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375; *citing Turnbull v. Rivers*, 14 S.C.L. 131, 139 (Ct. App. 1825) ("The necessity by which a person derives a right of way, is when one person sells to another lands inclosed [sic] on all sides by other lands. Here[,] the law imposes an obligation on the seller to allow the purchaser a right of way over his adjacent land.")).

The numerous Charleston County tax map exhibits, including Defendants' Exhibit 31, make it visually apparent that the Plaintiffs' parcels of land are not adjacent to and do

not abut the Coxes' parcel (nor any other Defendants' parcel, for that matter). The evidence is clear that the Plaintiffs' claim for implied easement by necessity fails for their inability to demonstrate any one of the three essential elements.

The Frank Brown Plaintiffs' claim for an easement by necessity fails because no evidence was submitted that there was ever unity of title between the Coxes' and the Frank Brown Plaintiffs' land (i.e., TMS No. 196-00-00-012). Instead, the evidence demonstrates that the predecessor in title to the Frank Brown Plaintiffs (Edward Brown, Thomas Brown, and Robert Brown) once owned a long strip of land, separated from the Coxes' land by two independent parcels, and which formerly stretched across Harts Bluff Road and continued on to Wadmalaw Sound. Edward Brown testified that the heirs of Frank Brown had since subdivided that large tract, several times, over the course of many years.

In 1989, the Frank Brown Plaintiffs subdivided their land, portioning off parcels that abutted Harts Bluff Road. (Defendants' Exhibits 13 and 14, *Plat of the Subdivision of Lands of Carl Brown*, Plat Book BW at Page 11). In the course of subdividing their tract, those plaintiffs included the following language on their plat: "We hereby dedicate the 50' road right of way to the use of the property owners. The owners and their heirs and assigns guarantee its maintenance." (Def. Ex. 14). This dedication is signed by Plaintiff Edward Brown, as well as by Lillian Washington as Daniel Brown's heir (predecessor in title to the Daniel Brown Plaintiffs) and Carl Brown. This recorded promise unequivocally demonstrates that access over the Coxes' property is not necessary to the Frank Brown Plaintiffs' use and enjoyment of their property. This Court finds that it is

clear from the evidence that TMS No. 196-00-00-012 has access via Back-A-Wood Road, as depicted on the plat recorded in Book BW at Page 011.

The Daniel Brown Plaintiffs' claim for an easement by necessity fails because no evidence was submitted that there was ever unity of title between the Coxes' and the Daniel Brown Plaintiffs' lots. Instead, the evidence demonstrates that the predecessor in title to the Daniel Brown Plaintiffs once owned a long strip of land, which formerly stretched from Bears' Bluff Road to Harts' Bluff Road and then continued on to Wadmalaw Sound. Numerous unrelated parcels separate their land from that of the Defendants. (*See* Def. Ex. 31). Plaintiffs Thelma Smalls David, Bernard Brown, Benjamin Smalls, Nicolette James, and Debra Commodore own property reflected on a subdivision plat of the Daniel Brown tract, which plat was recorded in Plat Book EJ, at Page 896, in the RMC Office for Charleston County, South Carolina (Pls.' Ex. 7). This subdivision plat clearly demonstrates that when the Daniel Brown Plaintiffs subdivided their land, they specifically created and dedicated two "NEW 20' INGRESS-EGRESS EASEMENTS," which allowed them to access their property via Bears Bluff and Harts Bluff roads—and not by way of Defendants' land. *Id.* As depicted on the plat, these new easements cross the Daniel Brown Plaintiffs' lots, and they are designed to give access to the cemetery lot, as well as to the other lots that the Daniel Brown Plaintiffs own. Thus, this Court finds that the Daniel Brown Plaintiffs' claim for easement by necessity fails for want of the essential elements (enumerated *supra*).

In this Court's view of the evidence, it is clear that the Plaintiffs have not met their burden to prove unity, severance of title, nor necessity. I therefore dismiss their claim for an easement by necessity, with prejudice.

II. The Plaintiffs have not met their burden to prove a prescriptive easement.

In the case of *Bundy v. Shirley*, the Supreme Court of South Carolina held that there is a heightened standard of proof as to the elements of a prescriptive easement. 412 S.C. 292, 306, 772 S.E.2d 163, 170 (2015). The Court held that "[g]iven that a prescriptive easement results in diminished rights of the property owner, we find that a claimant seeking a prescriptive easement must be held to a strict standard of proof. Accordingly, we join the majority of state jurisdictions and hold that a party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." *Id.* at 306, 170, *quoting Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) ("a private way is an easement in favor of another, in derogation of the rights of the owner; and hence is not to arise without clear, unequivocal proof of such facts as will give the right from the owner to the claimant."); *also quoting* 2 Am. Jur. *Proof of Facts* 3d. 125 § 3 ("This stricter standard of proof may be a result of the general opinion expressed by courts and commentators that prescriptive rights are not favored in the law since they result in corresponding losses or forfeitures of rights of other persons.").

As set forth above, it is clear from the evidence that the Plaintiffs are not all related by privity of title or blood. Thus, under *Bundy*, they each had the independent burden of proving, by clear and convincing evidence, each and every element of their claims for a prescriptive easement: (1) the identity of the thing enjoyed; (2) open, notorious,

continuous and uninterrupted use; (3) for a period of 20 years; and (4) contrary to the true property owner's rights. *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016). This Court has weighed the evidence presented by the Plaintiffs, and it finds that the evidence is not clear and convincing as to the elements discussed below.

A. The Plaintiffs' permissive use defeats their claims for prescriptive easement.

First, the evidence makes it clear that the Plaintiffs' use of the dirt road at issue was always with permission. Edward Brown testified that, in about 1987, he and his brother James Brown had a meeting with Defendant Donna Cox's now-deceased husband, Henry Lee. The parties to the meeting came to an agreement that James Brown could access the fields that he farmed (some of which were located on TMS No. 196-00-00-012) across what is now the Coxes' property. Edward Brown testified that his brother James Brown and Henry Lee worked together to construct the road on the Defendants' property that is the subject of this lawsuit.

Our Supreme Court has long held that permissive use of property cannot ripen into an easement by prescription. *Bundy*, 412 S.C. at 307-310, 772 S.E.2d at 171-174, *citing Williamson v. Abbott*, 107 S.C. 397, 93 S.E. 15 (1917). "It is the well-settled rule that use by express or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since user as of right, as distinguished from permissive user, is lacking, if permissive in its inception, such permissive character will continue of the same nature, and no adverse user can arise, until there is a distinct and positive assertion of a right hostile to the owner, and brought home to him." *Id., quoting Williamson.* "The asking and obtaining of permission . . . from the owner of the servient

estate, stamps the character of the use of as *not having been adverse, or under claim of right,* and therefore, as lacking that essential element which was necessary for it to ripen into a right by prescription." *Id.* at 310, 772 S.E.2d at 173 (emphasis added by *Bundy* Court).

The *Bundy* Court applied this ruling to a fact pattern in which Shirley (the alleged dominant estate holder) asked Bundy (the alleged servient estate holder) for permission to construct a gate on Bundy's property. Noting that "when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act," the Court found that "[b]y contacting Bundy regarding the gate, Shirley implicitly acknowledged Bundy's right to the property, thus defeating Shirley's own claim of right theory." *Id.* at 311, 772 S.E.2d at 174.

In weighing the evidence, this Court finds that Brown's testimony leaves no question that Plaintiffs' use of the road was permissive. Edward Brown's and James Brown's meeting with Henry Lee was an acknowledgement by the Browns of Lee's ownership of the property; it is clear that the parties made an agreement to construct together the dirt road that is the subject of this litigation. This agreement stamped the character of Plaintiffs' use as permissive and not hostile. This Court therefore holds that Plaintiffs have not met their burden to prove, by clear and convincing evidence, the essential element of adverse use.

B. The Plaintiffs did not meet their burden to prove open and notorious use.

Plaintiff Edward Brown was the only plaintiff to testify at trial. He stated that the Coxes' house was not visible from the road in question.[3] This Court finds that this testimony weighs against the burden to prove, by clear and convincing evidence, that the Plaintiffs' use was open and notorious.

C. The Plaintiffs did not meet their burden to prove continuous use.

Plaintiff Edward Brown testified that the subject dirt road has been used by the Daniel Brown Plaintiffs for the purpose of gaining access to a cemetery lot, which is depicted on the subdivision plat that is Plaintiffs' Exhibit 7. Plaintiffs submitted photographs of various graves within the cemetery. This evidence shows that there were burials in the cemetery in 1989, 1996, 2009, 2010, and 2012. (*See* Plaintiffs' Composite Exhibit 17). This Court notes that there is a gap in burials of approximately 13 years, and it therefore finds that the evidence is not clear and convincing of continuous use of the subject road for access to the cemetery lot.

D. The Plaintiffs did not meet their burden to prove uninterrupted use.

This Court also finds that the Plaintiffs did not meet their burden to prove uninterrupted use by clear and convincing evidence. Edward Brown testified at length to a confrontation between himself and the Coxes' predecessor in title, Carl Eaton, in which Eaton brandished a gun at Brown and told him not to use the dirt road. Brown also testified that Eaton had similar encounters with Plaintiff Bernard Brown. Although

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[3] Brown testified at trial that the old Red Road was about 15 yards away from the house on the Lee (now Cox) property, but, in or about 1984, James Brown and Henry Lee built the new Blue Road on the south end of the property. Brown testified that he did not think the Coxes' house could be seen from the Blue Road the last time Brown was there.

Edward Brown testified that that Eaton's threats and confrontation did not actually deter him from using the road, the law in South Carolina is clear that Eaton interrupted Brown's use.

In the case of *Pittman v. Lowther*, our Supreme Court examined the question of what actions by a servient landholder constitute an interruption in prescriptive use. *Pittman v. Lowther*, 363 S.C. 47, 610 S.E.2d 479 (2005). The Court held that "verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period." *Id.* Edward Brown's testimony about the violent confrontation between himself and Eaton illustrates the Court's rationale for this holding. The Court found: "[t]o adopt an interpretation of 'effective interruption' which requires a servient landowner to take actions in addition to erecting barriers like fences and cables, would encourage wrongful or potentially violent behavior that is contrary to sound public policy considerations and the peaceful resolution of disputes." *Id.*

In weighing the evidence presented, this Court finds that Edward Brown's testimony about violent confrontations over his and other people's use of the subject road weighs against and defeats Plaintiffs' burden of proving uninterrupted use by clear and convincing evidence.

For the reasons set forth above, this Court finds that the Plaintiffs failed to establish the essential elements of their prescriptive easement claim.

III. The Plaintiffs have not proven easements appurtenant.

In the course of their Rule 41 argument, Defendants raised and sought a ruling as to the extent of any easement that might be found. As set forth above, this Court finds that the Plaintiffs have failed to prove their claims for easement by necessity and prescriptive easement. For the sake of judicial economy, the Court will also address the parties' arguments on scope. The question of the extent of an easement is in equity and for determination by the court. "The distinction between an appurtenant easement and an easement in gross involves the extent of a grant of an easement, as opposed to the creation of an easement." *Williams v. Tamsberg*, 425 S.C. 249, 821 S.E.2d 494 (Ct. App. 2018).

The evidence is clear that Plaintiffs' claim for an appurtenant easement burdening the Defendants' property must fail for want of essential elements. "An appurtenant easement inheres in the land, concerns the premises, and has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof.... Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross." *Tupper v. Dorchester County*, 326 S.C. at 325–26, 487 S.E.2d at 191.

As set forth in Section I, above, the evidence shows that the subject road is not essentially necessary to the Plaintiffs' enjoyment of the purported dominant estates; this lack of necessity alone defeats Plaintiffs' claim for an appurtenant easement. Furthermore, the absence of a terminus on the dominant estate is fatal to a claim of an appurtenant easement. *Id.; see also Shia v. Pendergrass*, 222 S.C. 342, 351, 72 S.E.2d 699, 703

(1952) ("[A]n essential feature of an appurtenant easement or way is that it have one of its termini on the dominant property.").

The evidence presented by the Plaintiffs makes it clear that the dirt road which the Plaintiffs claimed to be an easement does not have a terminus on the property of any one of the plaintiffs to this lawsuit. Plaintiff Edward Brown testified at great length about the numerous unrelated parcels that he believed would benefit from the use of the road; several of the parcels are not party to this lawsuit. Brown testified that the road ran on and on, purportedly to access each of these numerous parcels. Further, Brown made two drawings of the subject road, one at trial and another at his deposition. (Plaintiffs' Ex. 3 and Defendants' Ex. 28). Finally, Plaintiffs admitted into evidence several plats purportedly depicting the subject road (although this Court notes that those plats do not designate the subject road as access) (Plaintiffs' Exhibits 7 and 9; Defendants' Exhibit 15). From the testimony, drawings, and plats, it is clear to the Court that the subject road does not have a terminus on the Frank Brown Plaintiffs' property (TMS 196-00-00-012).

As to where the road may terminate, this Court finds the evidence to be conflicting. The two plats conflict, with the Daniel Brown subdivision plat depicting a farm road as continuing on past the cemetery lot and the Ben Brown subdivision plat purportedly depicting the subject road as connecting with the Back-a-Wood Road extension. Edward Brown's two drawings conflict, with his trial drawing depicting the road as continuing on past the edge of the exhibit itself, and his deposition drawing depicting the road as terminating at the cemetery. Finally, Brown's testimony at trial indicates that the road

goes on and on, from parcel to parcel, to benefit numerous lots, including that of Plaintiff Debra Commodore (located far beyond the cemetery).

This Court finds that the lack of any clear evidence as to the roads' terminus defeats any claim by the Plaintiffs to an easement appurtenant. This Court further finds that evidence shows that the subject road is not essentially necessary to the enjoyment of Plaintiffs' lots, which have other access as depicted on the plats in evidence; the lack of necessity further defeats any claim for an appurtenant easement.

CONCLUSION

For the reasons set forth above, this Court finds that the Plaintiffs have shown no right to relief under the facts and the law. Pursuant to Rule 41 of the South Carolina Rules of Procedure, the Defendants' Motion for Involuntary Dismissal and Non-Suit is granted, judgment is rendered against the Plaintiffs on the merits of their easement claims, and this action is dismissed.[4]

IT IS SO ORDERED!

The Honorable Mikell R. Scarborough,
Master-in-Equity, Charleston County

December ___, 2019
Charleston, South Carolina

[4] Defendants have made a motion for the award of attorney's fees and costs, which the Court will consider separately.

Charleston Common Pleas

Case Caption: Thelma Smalls David , plaintiff, et al VS Donna Lee Cox , defendant, et al

Case Number: 2015CP1007000

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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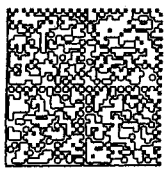

Ms. V. Claire Allen
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