

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
CASE NO. 2018-CP-46-01017

Trudy Bolin Mattox

Plaintiff,

ORDER

**RECEIVED**

-vs-

AUG 14 2020

Benjamin J. Russell and Chere Mitchell,

**SC Court of Appeals**

Defendants.

This matter came to be heard before the Court on Thursday, June 20, 2019 attended by Charles S. Bradford, Attorney for the Plaintiff, and James W. Boyd, Attorney for the Defendants. Also present were Plaintiff Trudy Bolin Mattox and Defendant Benjamin J. Russell ("Russell"). The Defendant Chere Mitchell ("Mitchell") was not present. The witnesses included Joanne Beckwith, Melvin Howell, Oscar Ramsey, James R. Jones, and Franklin Zeb Mattox. Plaintiff Exhibits 1-10 were received into evidence without objection.

This is an action for declaratory and injunctive relief arising out of an existing dirt and/or gravel drive ("DRIVE") that runs from S.C. Highway 363 (Beaverdam Road), along or through properties owned by the Defendants, terminating at property owned by the Plaintiff. Plaintiff seeks an order to confirm this existing DRIVE as an implied and/or prescriptive easement.

Based upon the testimony and evidence presented at the hearing, the Court makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

The real property which is the subject of this action is located in York County, South Carolina, involves eight (8) separate tax parcels, ("TRACTS 1-8") more particularly described in Exhibit A attached to this order.

Russell is the owner of the real property as described in TRACTS 1-6; Mitchell is the owner of the property described as TRACT 7, and the Plaintiff is the owner of the tract designated as TRACT 8. Mae J. Mitchell is the common grantor of TRACTS 1-6 and 8.

In 1975, TRACT 8 was conveyed by Mae J. Mitchell to Plaintiff's husband and predecessor in title, Carl Bolin. The deed does not mention easements or rights of way, but describes the property as shown in Plat 47 at Page 176 and Plat 47 at Page 181, both recorded. (Pl. Ex. 8).

In 1981, TRACT 5 was conveyed by Mae J. Mitchell to Grover and Mary Carter by deed dated and recorded on February 3, 1981 in Book 626 Page 441. This deed marks the metes and bounds as: "lying and being ..... on County Farm road leading south-westerly from to S.C. Highway No. S-363". (Pl. Ex. 5). The deed also describes the property by reference to recorded Plat 61 at Page 237. (Pl. Ex. 5). This plat shows "Farm Road" as ingress and egress to Highway 363.

In 1981, TRACT 6 was conveyed by Mae J. Mitchell to James D. Jones by deed dated February 26, 1981 and recorded on February 27, 1981 in Book 627 at Page 682. (Pl. Ex. 6). This deed marks the metes and bounds as: "lying and being ..., on a county farm road, said county farm road leading southwesterly from to S.C. Highway No. S-363... and shown as Lot No. 2 on ... Plat 62 at page 33". (Pl. Ex. 6). The deed also expressly conveyed "a right of way and easement for egress and ingress purposes along a county farm road leading southwesterly from to S.C. Highway No. S-363 as shown on the above mentioned plat and as will be located on the western and northwestern portions of said Lot No. 2 ..." (Pl. Ex. 6). Plat 62 at Page 33 shows "Farm Road" as ingress and egress to Highway 363. This same language is contained in the deed to Russell. (Pl. Ex. 6).

In 1984, TRACT 3 was conveyed by Mae J. Mitchell to James D. Jones, by deed dated July 26, 1984 and recorded on August 10, 1984 in Book 773 at Page 45. (Pl. Ex. 3). The deed marks the metes and bounds as: "lying and being on the east side of a dirt or county road leading to S.C. Highway No. S-363..., as shown on plat ... 74 at page 585 ..." (Pl. Ex. 3). This plat shows a road marked as "CO. RD" abutting or crossing TRACT 3 toward Highway 363. Russell received the property from Jones in December of 2017. The same language is contained in the deed to Russell. (Pl. Ex. 3).

In 1990, TRACTS 1, 2 and 4 were conveyed by the heirs of Mae J. Mitchell to predecessors in title of Russell. Each deed described the TRACT by reference to recorded Plat 104 at Page 119. This plat shows a road, marked as "Existing Road", leading from Highway 363, and abutting or crossing TRACTS 1, 2, 3, and heading into TRACTS 5 and 6. (Pl. Ex. 1). Each deed stated:

The above conveyance is made subject to any and all outstanding easements and rights of way of record, in place, visible or in the chain of title, if any.

As to egress and ingress reference is made to a long time existing roadway leading south from S.C. Highway No. 363 adjoining and along the above described real property all as set forth and shown on the above mentioned plat.

Russell received TRACT 4 in August of 2017 and TRACTS 1 and 2 in December of 2017 (Pl. Ex. 1, 2 and 4). Each deed regarding TRACTS 1, 2 and 4 to Russell contains the same plat reference and the paragraph regarding egress and ingress.

TRACT 7 had been a part of a larger tract owned by Jefferson B. Mitchell, Mary G. Mitchell and others, predecessors in title to Defendant Mitchell. (Pl. Ex. 7, Book 331, Page 58). In March of 1964, Jefferson B. Mitchell conveyed his interest in said property recorded in Book 331, Page 61. There was no mention of an easement, but reference was made to a recorded Plat 27 at Page 41. (Pl. Ex. 7; a clearer copy attached with this order as Exhibit B). In 1984, TRACT 7 was conveyed through the estate of Mary E. Mitchell recorded in Book 791, Page 258 which described the property by reference to Plat 75 at Page 197. (Pl. Ex. 7). This same plat was used to describe TRACT 7 in the deed of conveyance to Defendant Mitchell. (Pl. Ex. 7).

Prior to the conveyance of TRACT 8 to Plaintiff's husband in 1975, the DRIVE was used as ingress and egress between Highway 363 and Mae J. Mitchell's home located within TRACT 5, by Mae J. Mitchell, her guests and invitees.

After conveyance of TRACT 8 to Plaintiff's husband in 1975, the DRIVE was used by Plaintiff, her husband, their guests and invitees as ingress and egress to Plaintiff's property from Highway 363 on a weekly basis. This usage of the roadway included use by regular passenger vehicles, large farming equipment, as well as commercial trucks and equipment for cutting timber.

In the early 1980s, James Jones, a predecessor in title to Russell, placed a locked gate across the DRIVE, accessible by key or code. Prior to installing the gate, Jones requested the permission to install the gate from the other property owners, including Plaintiff and her husband. It was not Jones' intent to use the gate to prohibit or restrict access to the DRIVE to the other property owners. Jones' intent in installing the access gate was to protect certain farming equipment he kept on his property from theft.

In 2018, Russell placed a locked gate, accessible only by key or code across the DRIVE with the intent to restrict its use by the Plaintiff and others.

### CONCLUSIONS OF LAW

#### **Easement by Prescription**

Plaintiff asserts a right to an easement by prescription. To establish an easement by prescription, the Plaintiff must show by clear and convincing evidence that the use was open, notorious, continuous, uninterrupted and contrary to the true owner for 20 years. *Bundy v. Shirley*, 412 SC 292, 772 S.E.2d 163 (2015). The period of use of prior owners may be added to satisfy the time requirement. *Id.* Based upon the testimony, Plaintiff established by clear and convincing evidence that Plaintiff and Plaintiff's predecessors-in-interest used the gravel DRIVE for ingress and egress between Beaverdam

Road/Highway 363 and TRACT 8 for more than 20 years, openly, notoriously, and continuously. This use was uninterrupted despite the gate installed by Jones in the early 1980s.

“The mere erection of gates by the servient owner for the greater convenience of his operations, and not as a barrier to passage, will not defeat a claim to a prescriptive easement of passage.” *Pittman v. Lowther*, 355 S.C. 536, 586 S.E.2d 149 (Ct. App. 2003) (citation omitted). If the intention is to exclude others and interrupt use of the right claimed, a prescriptive easement is not acquired. *Id.* It was not Jones’ intention to exclude the other landowners from using the DRIVE, but to protect machinery stored on his property. Further, Jones requested permission from the other property owners before placing the gate on the DRIVE and gave all an access key that allowed uninterrupted access.

### Easement by Implication

Plaintiff also claims a private easement by implication as to the DRIVE on Defendants’ properties.

Where a conveyance of land describes the parcel as bounded by a street designated in the conveyance, or refers to a map on which spaces for streets, parks or other commons uses are shown, but the conveyance says nothing about the creation of an easement or a dedication to public use, the conveyee of the land acquires an easement with respect to the street or the areas shown on the map.

[S]uch an easement inures to the benefit of the grantee and his successors in title. The existence of the easement will be implied by law, unless it appears that the grantor specifically intend otherwise. *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990) (citations omitted); *see also Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008).

Mae J. Mitchell is a common grantor of Plaintiff and Russell. Plats 47 at Pages 176 and 181 clearly display a road abutting Plaintiff’s property, the latter marking the road as access to Highway 363. Based on the standard above, an easement for Plaintiff’s ingress and egress to Highway 363 is implied by law. The deeds and plats regarding later transfers by Mae J. Mitchell of TRACTS 3, 5, and 6 (detailed earlier) support her intention to convey use of the DRIVE. Also, no other easement or means of ingress or egress (expressed or implied) can be found within the recorded documents as conveyed from Mae J. Mitchell to Plaintiff’s husband.

As for TRACT 7, Defense counsel correctly stated that an easement could not be implied to property Mae J. Mitchell never owned. Even assuming Jefferson B. Mitchell is a common grantor as to TRACTS 7 and 8<sup>1</sup>, no easement may be implied. The plat referenced in the deed from Jefferson B. Mitchell

<sup>1</sup> Eleven of the 38 acres Mae J. Mitchell conveyed to Plaintiff’s husband were inherited from Jefferson B. Mitchell. (Pl. Ex. 8, Book 514, Page 120).

shows a road leading up to Highway 363, but it terminates at the top of TRACT 7, not Plaintiff's property. (Pl. Ex. 7, Plat 27 at page 41). Therefore, I conclude an implied easement exists for Plaintiff's ingress and egress to Highway 363. However, this easement does not cross into the property of Defendant Mitchell, but abuts TRACT 7 to the north of what was formerly Mae J. Mitchell's property.

Since an easement has been determined in favor of Plaintiff, it is not clear to the Court that Plaintiff's request for an injunction is needed at this time.

**ORDER**

Based on the findings of fact and conclusions of law herein, it is ordered as follows:

1. Plaintiff is granted a declaratory judgment for a prescriptive easement. This easement applies to the now existing dirt/gravel DRIVE used as ingress and egress leading from S.C. Highway 363 to Plaintiff's property being twelve and one-half feet (12.5') wide.
2. Plaintiff is granted a declaratory judgment for an implied easement. This easement applies to the portions of the existing dirt/gravel DRIVE abutting or crossing TRACTS 1-6 belonging to Defendant Russell. This easement abuts TRACT 7, but does not include any portion of the existing dirt/gravel DRIVE that crosses into said TRACT. This easement is for ingress and egress to Highway 363. This ruling does not prohibit, restrict or limit Plaintiff's use of the existing DRIVE onto TRACT 7 pursuant to this Court's finding of a prescriptive easement.
3. This order does not preclude Defendant Russell from controlling access to the gravel DRIVE by a gate, so long as the Plaintiff is provided with a key, code or other means which allow uninterrupted access through the gate to her property.
4. Plaintiff's request for a permanent injunction is denied.

JUDGE'S SIGNATURE PAGE TO FOLLOW

**EXHIBIT A**

**TRACT 1:**

All that certain piece, parcel or tract of real property with any and all improvements that might be situate and located thereon containing 2.18 acres, more or less, and lying and being on the southern side of S.C. Highway No. S-363, Beaver Dam Road, near its junction with S.C. Highway No. S-345, Hopewell Road, and S.C. Highway No. 97, Bullock Creek Township, County and State aforesaid, and being set forth, shown and described as Lot No. 1 on plat of survey entitled "Property of Mae J. Mitchell Estate" prepared by John Quinn Hall, Registered Land Surveyor, and dated August 21, 1989 and recorded in Plat Book 104, at Page 119, Office of the R.M.C. for York County, South Carolina to which reference is hereto made for a more particular description as to metes and bounds.

The above conveyance is made subject to any and all easements and rights of way of record, in place, visible or in the chain of title, if any.

DERIVATION: This is the identical property conveyed to Benjamin J. Russell by deed of Stanley Mark Goss and Linda M. Goss dated February 24, 2017 and recorded on February 27, 2017 in Record Book 16251, Page 440 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Parcel: 054-00-00-035

**TRACT 2:**

All that certain piece, parcel or tract of real property with any and all improvements that might be situate and located thereon containing 2.18 acres, more or less, and lying and being on the southern side of S.C. Highway No. S-363, Beaver Dam Road, near its junction with S.C. Highway No. S-345, Hopewell Road, and S.C. Highway No. 97, Bullock Creek Township, County and State aforesaid, and being set forth, shown and described as Lot No. 2 on plat of survey entitled "Property of Mae J. Mitchell Estate" prepared by John Quinn Hall, Registered Land Surveyor, and dated August 21, 1989 and recorded in Plat Book 104; at Page 119, Office of the R.M.C. for York County, South Carolina to which reference is hereto made for a more particular description as to metes and bounds.

As to egress and ingress references is made to a long time existing roadway leading south from S.C. Highway No. 363 adjoining and along the above described real property all as set forth and shown on the above-mentioned plat.

DERIVATION: This is the identical property conveyed to Benjamin J. Russell by deed of Joyce H. Jones dated December 20, 2017 and recorded on December 21, 2017 in Record Book 16754, Page 432 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Parcel: 054-00-00-003

**TRACT 3:**

All that certain piece, parcel or tract of real property with any and all improvements that might be situate thereon, lying and being on the east side of a dirt or county road leading to S.C. Highway No.

S-363, Bullock Creek Township, County and State aforesaid and containing 1.02 acres, more or less, all as set forth and shown on plat of survey entitled "Property of James D. Jones," prepared by John Quinn Hall, Registered Land Surveyor, and dated July 23, 1984 and recorded in Plat Book 74, at Page 585, R.M.C Office for York County, South Carolina, to which reference is hereto made for a more particular description as to metes and bounds.

DERIVATION: This is a portion of the property conveyed to Benjamin J. Russell by deed of James D. Jones dated December 20, 2017 and recorded on December 21, 2017 in Record Book 16754, Page 435 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Parcel: 054-00-00-028

**TRACT 4:**

All that certain piece, parcel or tract of real property with any and all improvements that might be situate and located thereon containing 1.27 acres, more or less, and lying and being on the southern side of S.C. Highway No. S-363, Beaver Dam Road, near its junction with S.C. Highway No. S-345, Hopewell Road, and S.C. Highway No. 97, Bullock Creek Township, County and State aforesaid, and being set forth, shown and described as Lot No. 3 on plat of survey entitled "Property of Mae J. Mitchell Estate" prepared by John Quinn Hall, Registered Land Surveyor, and dated August 21, 1989 and recorded in Plat Book 104, at Page 119, Office of the R.M.C. for York County, South Carolina to which reference is hereto made for a more particular description as to metes and bounds.

The above conveyance is made subject to any and all outstanding easements and rights of way of record, in place, visible or in the chain of title, if any. As to the egress and ingress reference is made to a long time existing roadway leading south from S.C. Highway No.363 adjoining and along the above described real property all as set forth and shown on the above-mentioned plat.

This property is subject to a certain 30' easement bordering the western boundary lines of Lot Nos. 1, 6, and 3, as set forth on the above-mentioned plat as well as such interest in that right of way and easement referred to as Old Road as borders Lot Nos. 2, 3, 4, and 5, as set forth on plat of survey entitled "Property of Mary E. Mitchell Estate," prepared by John Quinn Hall and dated May 22, 1984 and recorded in Plat Book 75, Page 197, RMC Office for York County, South Carolina.

DERIVATION: This is the identical property conveyed to Benjamin J. Russell by deed of Chere Mitchell dated August 11, 2017 and recorded in Record Book 16534, Page 221 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Parcel: 054-00-00-036

**TRACT 5:**

All that certain piece, parcel or tract of real property with any and all improvements that might be situate and located thereon, containing 8.2 acres, more or less, and being situated on the western side of a farm type road leading from S.C. Highway No. 363 referred to as Beaver Dam Road, Bullock Creek Township, County and State aforesaid and being set forth, shown and described on plats

recorded in Plat Book 61, at Page 237; Plat Book 62, at Page 33; and Plat Book 104, at Page 119. Said 8.2 acre tract is made up of Lot 3 containing 1.02 acres as shown in Plat Book 62, at Page 33; a tract containing 6.0 acres as shown in Plat Book 61, at Page 237; and Lot 4 containing 1.18 acres as shown in Plat Book 104, at Page 119, all RMC Office for York County, South Carolina, to which recorded plats reference is made for a more complete and accurate legal description as to metes and bounds.

Also conveyed herein to the above-named Grantee, his heirs and assigns forever, is all the right, title and interest of Grover M. Carter in any right of way and easement for egress and ingress purposes along the county farm road leading from S.C. Highway S-363 and any and all interest in any other rights of way or easements as granted by predecessors in title to previous owners of the above-described parcels of real property.

DERIVATION: This is a portion of the property conveyed to Benjamin J. Russell by deed of James M. Carter and Patricia Holder Lewis dated October 25, 2016, recorded on October 28, 2016 in Record Book 16027, Page 236, and re-recorded on March 10, 2017 in Record Book 16274, Page 131.

Tax Map Parcel: 054-00-00-023

**TRACT 6:**

All that certain piece, parcel or tract of real property with any improvements that might be situate and located thereon, lying and being in Bullock Creek Township, on a county farm road, said county farm road leading southwesterly from S.C. Highway S-363 near junction with S.C. Highway S-345 and 97 containing 2.55 acres, more or less, all set forth and shown as Lot No. 2 on a plat of survey entitled "Property of ...James D. Jones" prepared by John Quinn Hall, R.L.S. and dated February 19, 1981 and said plat recorded in Plat Book 62, at Page 33, R.M.C. Office for York County, South Carolina, to which reference is hereto made for a more particular description as to metes and bounds. Said property is bounded on the north by property of Smarr, on the west by Grover M. Carter, on the east by Smarr, and on the south by Mary G. Mitchell.

Also conveyed herein is a right of way and easement for egress and ingress purpose along a county farm road leading south-southwesterly from S.C. Highway No. S-363 as set forth and shown on the above-mentioned plat and as will be located on the western and northwestern portions of said Lot No. 2 as above herein conveyed.

DERIVATION: This is a portion of the property conveyed to Benjamin J. Russell by deed of James D. Jones dated December 20, 2017 and recorded on December 21, 2017 in Record Book 16754, Page 435 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Parcel: 054-00-00-026

**TRACT 7:**

All that certain piece, parcel or tract of real property, containing 14.31 acres, more or less, being located near S.C. Highway No. S-363 and S.C. Highway S-345, Bullock Creek Township, York County, South Carolina, and being set forth and shown as Tract No. 1 on plat of survey entitled "Property of Mary E.

Mitchell Estate," prepared by John Quinn Hall and dated May 22, 1984, and recorded in Plat Book 75, at Page 197, R.M.C. Office for York County, South Carolina to which reference is heretofore made for a more particular description as to metes and bounds.

The above conveyance is made subject to any and all outstanding easements and rights of way of record, in place, visible or in the chain of title, if any. As to the egress and ingress reference is made to a long time existing roadway leading south from S.C. Highway No. 363 adjoining and along the above-described real property all as set forth and shown on the above-mentioned plat.

DERIVATION: This is a portion of the property conveyed to Chere Mitchell by deed of Roy M. Mitchell, for which a life estate was reserved for Roy M. Mitchell, dated May 27, 2010 and recorded on June 1, 2010 in Record Book 11422, Page 203 in the Office of the Clerk of Court for York County, South Carolina. Roy M. Mitchell died on December 12, 2015, for which reference may be made to Death Certificate filed in Record book 16534, Page 220 in the Office of the Clerk of the Court for York County, South Carolina.

Tax Map Parcel: 054-00-00-004

**TRACT 8:**

All that certain piece, parcel or tract of land located in Bullock Creek Township, York County, South Carolina, containing 36 acres, more or less, and being the same and identical property as set forth and described on a plat of survey prepared by L. Marion Wood, dated December 3, 1974, and showing the owner to be "Carl E. Bolin", said plat to be recorded with this deed in Plat Book 47, at Page 181, R.M.C. Office for York County, South Carolina.

ALSO: All that certain piece, parcel or tract of land containing 2 acres, more or less, and located in Bullock Creek Township, County and State aforesaid, with said 2-acre tract of land being more fully set forth by metes and bounds on plat of survey prepared by L. Marion Wood and dated June 14, 1974 and showing the owner to be "Mrs. Jeff Mitchell" and said plat to be recorded with this deed in Plat Book 47, at Page 176, R.M.C. Office for York County, South Carolina. This tract of land joining the above-described 36-acre tract of land in the northeastern corner of said 36-acre tract of land.

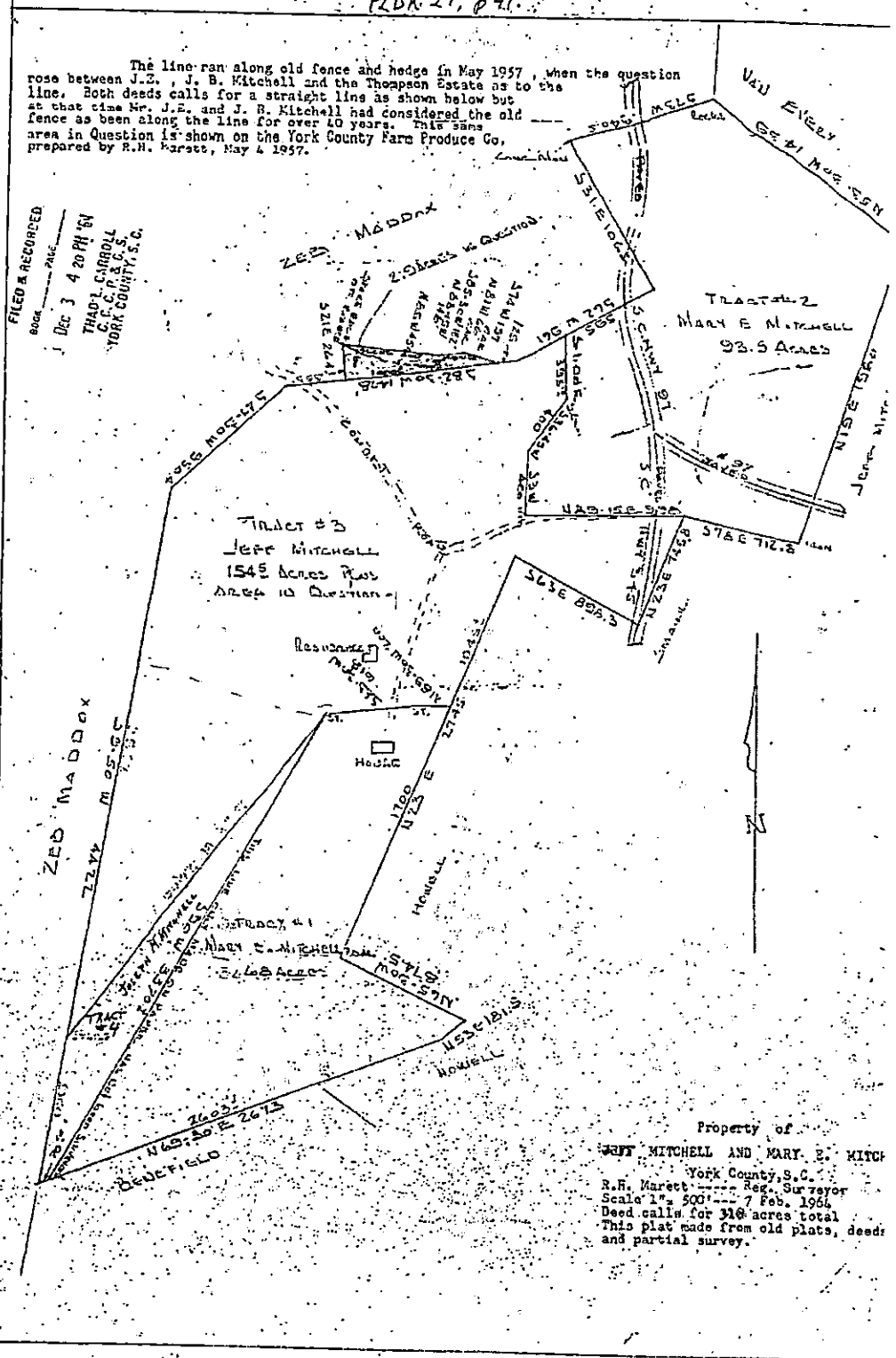
DERIVATION: This is a portion of the property acquired by Trudy Cranford Bolin as heir of Carl Evans Bolin, who died on April 18, 1990, for which reference may be made to York County Probate File 1990-ES-46-00254. See Deed of Distribution recorded on August 28, 1990 in Record Book 116, Page 157 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Parcel: 054-00-00-002

PLBK 27, p 41.

The line ran along old fence and hedge in May 1957, when the question rose between J.E., J. B. Mitchell and the Thompson Estate as to the line. Both deeds calls for a straight line as shown below but at that time Mr. J.E. and J. B. Mitchell had considered the old fence as been along the line for over 20 years. This same area in question is shown on the York County Farm Produce Co. prepared by R.H. Maret, May 4 1957.

FILED & RECORDED  
BOOK PAGE  
Dec 3 4 20 PM '57  
THADL CARROLL  
C.E.C. P. & S.C.S.  
YORK COUNTY, S.C.



*Revised Plat Book 27 Page 41*

Property of  
JEFF MITCHELL AND MARY E. MITCHELL  
York County, S.C.  
R.H. Maret, Reg. Surveyor  
Scale 1" = 500' - 7 Feb. 1954  
Deed calls for 318 acres total  
This plat made from old plat, deeds  
and partial survey.