

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Maria Hernandez,

Plaintiff,

vs.

Mary V. Fields, Dora Bennett, Shaakira Saffir
a/k/a Shaakira Saffir Nia Rashad f/k/a Audrey I.
Knight,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2018-CP-27-00507

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

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SC Court of Appeals

THIS CASE COMES BEFORE THE COURT on Plaintiff Maria Hernandez's Motion for Summary Judgment and accompanying exhibits ("Motion") filed September 27, 2019 pursuant to Rule 56, SCRCP, request that she be awarded judgment as a matter of law as to its causes of action for Declaratory Judgment and Permanent Injunction in its Amended Complaint ("Complaint").

The Motion and all hearings pertaining thereto were properly served and noticed as filed with the Clerk of Court's office ("Clerk"). This Court conducted a hearing at my law office on November 5, 2019, where all parties were present along with Plaintiff's counsel, Drew B. Walker, Esq. I granted Plaintiff's Motion and requested that Plaintiff order an updated survey showing the encroachments within the easement that is the subject of this case.

A "Survey prepared for Maria Hernandez by TGS Land Surveying, dated January 9, 2020" ("Survey") was prepared, and a copy of same was served on all Defendants on February 10, 2020 as shown as shown by a Certificate of Mailing filed February 10, 2020. Plaintiff's counsel has or will file the Survey with the Clerk as part of the record in this case.

A re-hearing was heard on July 21, 2020 so that a court reporter could be present to provide a transcript of all arguments of the parties ("Re-hearing"). All parties were provided a Notice of Hearing of the Rehearing as shown by the filings with the Clerk of Court. Present at the Re-Hearing, which was conducted telephonically by Remote Communication Technology as provided for in the Order dated April 3, 2020 by the Supreme Court of South Carolina in Appellate Case No. 2020-000447, were Plaintiff Maria Hernandez and her counsel, Drew B. Walker, Esq., and the *pro se* Defendants Dora Bennett ("Ms. Bennett") and Shaakira Saffir a/k/a Shaakira Saffir Nia Rashad f/k/a Audrey I. Knight ("Ms. Saffir"). Having heard all arguments of counsel and parties, I grant the Plaintiff's Motion based on the following.

1. The laws of South Carolina provide that the Plat (as defined in the Complaint) established and created a private easement dedicated to the use by the Plaintiff, its successors in title, and the public pursuant to the placement and recordation of the Plat and Easement (as defined in the Complaint) on the public records of Jasper County, and upon the conveyance of one or more deeds to Lot 3 as set out and described in the Plat as recorded. *See Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975).

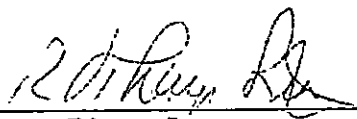
2. ~~I have considered Ms. Saffir's argument that a physical road was never constructed within the Easement. However, this has no impact on the legal conclusion that an easement exists as ruled upon in Section 1 as a matter of law. I have considered Ms. Saffir's argument that some of the lot owners in the subdivision were not named in the subject action; however, the real property that is the subject of this action is only the Easement, to which Plaintiff has rights in, and which Ms. Saffir has encroached upon. I take note of Ms. Bennett's testimony that her sister Ms. Saffir should not have encroached into the Easement that should~~

serve as a roadway into the subdivision, and that Ms. Bennett has no issue with Ms. Hernandez having access through the Easement.

3. Therefore, Plaintiff is entitled to a declaratory judgment that Plaintiff is entitled to and has the full, free, unfettered, and legal right of use and access of the Easement.

4. Additionally, Plaintiff is entitled to permanent injunctive relief enjoining Defendant Saffir, or other Defendants, to remove the Encroachments (as defined in the Complaint) from the Easement and to refrain from taking any action that would interfere or hinder in any way with the Plaintiff's ability to exercise her, or others, rights under the Easement, including allowing access to Lot 3 and to the cul-de-sac as depicted on the Plat. Defendant Saffir is ordered to immediately remove the Metal Fence and Shed within the Easement as shown on the Survey. Plaintiff is allowed to remove any pine trees within the Easement. Plaintiff is allowed to maintain the easement so that vehicular access can be provided. While Plaintiff does not believe at this time that it will be necessary to remove the Residence in order to allow the Easement to be accessed by her family, visitors, contractors, mail delivery service or any other third parties requiring access, she reserves the right and is entitled to have all Encroachments removed as necessary and under this Court Order in the future.

AND IT IS SO ORDERED.



R. Thayer Rivers, Jr.
Special Referee for Jasper County