

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM JASPER COUNTY

Court of Common Pleas

R. Thayer Rivers, Jr., Special Referee

Appellate Case No. 2020-001301

Maria Hernandez, Respondent,

v.

Mary V. Fields, Dora Bennett, Shaakira Saffir a/k/a Shaakira Saffir Nia Rashad

f/k/a Audrey I. Knight, Defendants,

Of whom Mary V. Fields and Dora Bennett are Respondents and Shaakira Saffir is

the Appellant.

INITIAL BRIEF OF APPELLANT SAFFIR

Mary Patricia Crawford, Esquire
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STATEMENT OF ISSUE ON APPEAL

1. Did the Trial Court err when it granted summary judgment for the Plaintiff pursuant to Rule 56(c), SCRCP as a matter of law?

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006); Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 219, 616 S.E.2d 722, 729 (Ct. App. 2005).

Ordinarily an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review. . . . Error preservation requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

However, our supreme court has found an issue is preserved for appeal when the trial judge's order granted respondents' motion for summary judgment on *precisely* the grounds argued by respondents at the summary judgment hearing. The subject order restated the ground on which the Respondent requested the motion—the filing of the plat created the easement. This ruling is sufficient to preserve Appellant's argument that respondents owed a duty to petitioner, and petitioner was not required to file a Rule 59(e)

motion to SCRCP alter or amend in order to preserve the issue for appeal. Spence v Wingate, 381 S.C. 487 (2009) 674 S.E.2d 169

STATEMENT OF THE CASE

This case began on May 17, 2018, by the filing by Respondent of a Summons and Complaint together with a Motion to Refer to a Special Referee in the Court of Common Pleas, County of Jasper, State of South Carolina. The Summons and Complaint was subsequently served upon Appellant.

On September 20, 2018 the Order for Reference to a Master or Special Referee was issued by the Court of Common Pleas, County of Jasper, State of South Carolina.

On September 21, 2018 the defendants Dora Bennett and Mary V. Fields were served with the Summons and Complaint, Lis Pendens and Motion.

On October 28, 2018 the pro se defendants Dora Bennett and Mary V Fields filed a letter/Answer in the Court of Common Pleas, County of Jasper, State of South Carolina.

On April 16, 2019 Respondent filed a Motion to Alter or Amend the Complaint for the purpose of naming additional, newly discovered defendants in the Court of Common Pleas, County of Jasper, State of South Carolina. .

On April 25, 2019 the Court granted the Motion to Alter or Amend the Complaint and so ordered same.

On May 17, 2019 the Respondent filed her amended pleadings in the Court of Common Pleas, County of Jasper, State of South Carolina.

On May 21, 2019 the Appellant was served with the amended pleadings.

On June 14, 2019 the pro se Appellant filed an Answer to the Complaint in the Court of Common Pleas, County of Jasper, State of South Carolina.

On September 27, 2019 Respondent filed a Motion for Summary Judgment in the Court of Common Pleas, County of Jasper, State of South Carolina.

On October 1, 2019 Appellant was served with the Notice of Hearing and Motion for Summary Judgment.

On or about November 15, 2019 a Hearing on the Motion was held without the presence of a Court Reporter.

On February 10, 2020 a Notice of Hearing Status Conference was filed in the Court of Common Pleas, County of Jasper, State of South Carolina.

On February 10, 2020 Appellant was served with the Notice of Hearing Status Conference.

On April 6, 2020, two (2) years after her purchase of Lot 3, Respondent filed a new survey of a portion of Lots 1 through 4 and the alleged Easement.

On April 10, 2020 Respondent filed a Notice of Hearing on Motion for Summary Judgment in the Court of Common Pleas, County of Jasper, State of South Carolina.

On April 10, 2020 Appellant was served with the Notice of Hearing on Motion for Summary Judgment.

On April 29, 2020 Respondent filed a Notice of Remote Hearing on Motion for Summary Judgment in the Court of Common Pleas, County of Jasper, State of South Carolina.

On April 29, 2020 Appellant was served with Notice of Remote Hearing on Motion for Summary Judgment.

On May 12, 2020 Respondent filed a Notice of Remote Re-Hearing on Motion for Summary Judgment in the Court of Common Pleas, County of Jasper, State of South Carolina.

On May 12, 2020 Appellant was served with filed a Notice of Remote Re-Hearing on Motion for Summary Judgment.

On June 29, 2020 Respondent filed a Notice of Remote Re-Hearing on Motion for Summary Judgment in the Court of Common Pleas, County of Jasper, State of South Carolina.

On June 29, 2020 Appellant was served with filed a Notice of Remote Re-Hearing on Motion for Summary Judgment.

On July 21, 2020 a hearing on the Motion for Summary Judgement was held.

On July 22, 2020 Respondent filed an Exhibit for Motion for Summary Judgment.

On September 2, 2020 the Court issued it Order granting Respondent's Motion for Summary Judgment.

On September 24, 2020 Appellant filed her Notice of Appeal with the Court of Common Pleas, County of Jasper, State of South Carolina.

On October 19, 2020 Appellant received the transcript for the hearing on the Motion for Summary Judgment.

STATEMENT OF THE FACTS

This case began when Hattie Bennett, now deceased, had surveyed rural family property for purposes of dividing the property among her children and other family members. This survey subdivided the property into 16 lots entitled "Hattie Bennett Subdivision". The survey was recorded as on November 17, 1987, in the Office of the Register of Deeds, Office of the Clerk of Court for Jasper County, South Carolina in Plat Book 18 at Page 138. Upon the aforementioned Plat an area was designated as a road between the lots.

Since its designation on the aforesaid Plat the road has not been used or paved by the inhabitants as their primary means of ingress and egress. Since 1987 various family members have been deeded and/or lived on the Hattie Bennett Subdivision property and developed alternative methods of egress and ingress to the road designated on the Plat. For the last thirty-three (33) years all parties utilized used these alternative means for purposes of ingress and egress.

On or about 1995 the Appellant, a relative of Hattie Bennett, moved into a pre-existing family home which was located on Lot 1 over the lot line into the area designated on the Plat as the "road". Since the time she took possession of the property, Appellant, has erected a fence around her property, constructed a small shed and permitted the natural vegetation in the area, including trees to grow around her home.

On or about August 9, 1999 Luther Bennett took title and possession of Lot 3 said deed was recorded in the Office of Register of Deeds, Office of the Clerk of Court, Jasper County, South Carolina.

On or about March 11, 2015 Audrey Lee Bennett Knight legally changed her name to Shaakira Saffir.

On or about April 15, 2015 the Estate of Hattie Bennett by its personal representative, Charlene Armstrong, deeded by Deed of Distribution, Lots 1, 2, 4, 7, 8, 9, 10 and 11 to Charline Armstrong, Delores Bennett, Dora Bennett, Isaiah Bennett, Kinah Bennett, Kishon Bennett, Leta Bennett, Luther Bennett, Jr., Renesah Bennett, Ross Bennett, Yontalay Bennett, Herbert Fields, Benjamin Johnson, Ida B. Jones, Audrey I Knight, Shaakira Saffir.

On or about August 8, 2017, U.S. National Bank acquired title by way of foreclosure, to Lot 3 by judicial deed recorded in Book 955 at Page 0320 in the Office of the Register of Deeds, Office of the Clerk of Court, Jasper County, South Carolina.

On or about January 31, 2018, Respondent purchased Lot 3 from U.S. National Bank by Special Warranty Deed recorded in Book 971 at Page 0290 in the Office of the Register of Deeds, Office of the Clerk of Court, Jasper County , South Carolina.

On or about February 10, 2018, Respondent and her husband took possession of Lot 3 and commenced repair work on the mobile home located on Lot 3.

Respondent claims that the "road" designated on the Hattie Bennett Subdivision plat is the only manner of egress and ingress to Lot 3 and that Appellant's home, fence, shed impair the ability to use the "road". Respondent claims that the "road" is a private easement to which she is entitled by virtue of the conveyance of said property by Special Warranty Deed form U.S. National Bank and that the Respondent is the legal holder of the Easement rights for ingress and egress.

Respondent demands, based on the above premise, that Appellant must remove all encroachments on the alleged Easement and that Appellant may not take any action which would interfere or hinder in any way with the Respondent's ability to use the Easement for purposes of ingress and egress.

ARGUMENT

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corrections, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 620, 622 S.E.2d 733, 737 (Ct. App. 2005). If triable issues exist, those issues must go to the [finder of fact]. Mulherin-Howell v. Cobb, 362 S.E.2d 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCF; Law v. SC Dep't of Corr. 323 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); BPS, Inc. v. Worthy, 362 S.C. 319, 325, 608 S.E.2d 155, 159 (Ct.App.2005). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006); see also Schmidt v. Courtney, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct.App.2003) (stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005); Miller, 365 S.C. at 220, 616 S.E.2d at 729; Montgomery v. CSX Transp., Inc., 362 S.C. 529, 608 S.E.2d 440 (Ct. App. 2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 5, 605

S.E.2d 744, 746 (Ct.App.2004). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Rife v. Hitachi Const. Mach. Co., Ltd., 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005); Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 228, 612 S.E.2d 719, 722 (Ct. App. 2005). The moving party may discharge the burden of demonstrating the absence of a genuine issue of material fact by pointing out the absence of evidence to support the nonmoving party's case. Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.E. 256, 361, 563 S.E.2d 331, 333 (2002). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Wogan v. Kunze, 366, S.C. 583, 591, 623, S.E.2d 107, 112 (Ct. App. 2005). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rife, 363 S.C. at 214, 609 S.E.2d at 568.

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003); Eagle Container, 366 S.C. at 621, 622 S.E.2d at 738; Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 393, 593 S.E.2d 183, 186 (Ct.App.2004). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); Wogan, 366, S.C. at 592, 623, S.E.2d at 112; B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

When considering the issue of whether or not the filing of the plat created an easement to which the Respondent is entitled and from which Appellant is enjoined from encroaching upon, the Court must look to the facts of the case as 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). “The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury. Slear v. Hanna, 329 S.C. 407, 496 S.E.2d 633 (1998).

The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution, Lancaster v. Smithco, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979); Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); see also Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of the land) (citation omitted).

While in Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965), our Supreme Court stated the general rule that when the owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title, and the public. See also Carolina Land Co., 265 S.C. at 105, 217 S.E.2d at 19. Thus, the purchaser of lots

with reference to the plat of the subdivision acquires every easement, privilege and advantage shown upon said plat, including the right to the use of all the streets, near or remote, as laid down on the plat by which the lots are purchased. Blue Ridge, 247 S.C. at 119-20, 145 S.E.2d at 925; Carolina Land Co., 265 S.C. at 105, 217 S.E.2d at 19. However, the issue of whether or not the incorporation of the plat is for descriptive purposes only is determinative of the ultimate issue of the creation of an easement.

In Lancaster, 246 S.C. at 469, 144 S.E.2d at 211, [t]he only reference in the deed in th[e] case to the plat was in connection with the description of the lot. Therefore, such reference to the recorded plat made it a part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Id. In that case, our Supreme Court edified:

“A plat, however, is not an index to encumbrances, and the mere reference in a deed, as in this case, to a plat for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of a clear intention that it so operate,” Id.

Both Blue Ridge and Lancaster look to the intention of the parties in incorporating a plat to determine its effect. In the instant case, a reading of the Deed as a whole reveals the parties used the Plat as a reference to the boundaries, metes, courses and distances of the property conveyed. The intention of the parties in incorporating the Plat, when discerned from the Deed as a whole, was to show the boundaries, metes, courses and distances of the property conveyed, not to represent or warranty the existence of an easement to which respondent may or may not be entitled.

In the instant matter the Court determined simply as a matter of law that “when Sweeney Bennett does a plat and records the plat in the courthouse, all the proposed roads on that plat

become easements.” Transcript page 19, lines 1-2. The Court further decided, “anybody that buys land off that plat, is entitled to every single thing shown on that plat, including proposed roads that have never been opened up.” Transcript page 18 lines 24-25.

The Court failed to acknowledge that disputable material facts existed which needed to be decided prior to the issuance of any order. The Court ignored the facts and failed to apply the law to those facts to make its determination. The Court failed to consider the facts concerning the purpose of the reference in the deed to the Plat being for purely descriptive purposes and thus, would not incorporate the rights and uses of any and all easements appurtenant or in gross; nor by such description create any easements; failed to determine whether or not at the time of the conveyances the circumstances indicated that the grantor intended to convey the right to the easement; and failed to determine whether or not by the act of having the residence on a portion of the road in a manner of continuous, hostile, open, actual, notorious, and exclusive possession for a period in excess of twenty (20) years the easement was destroyed by adverse possession or if such act indicated the intent of the original conveying party(s) not to have that road as an easement utilized for ingress or egress.

Further the Court in reliance on the general rule of law found in a singular case, Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975), Order page 2, paragraph 1, lines 14-15 reasoned “ 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 recorded,” to render its decision. The issues of

material fact applying the more recent case law which placed conditions and caveats upon that general precept, and which required decision were not considered by the Court.

CONCLUSION

The Trial Court improperly granted the Respondent's Motion for Summary Judgment and consequently improperly granted permanent injunctive relief against Appellant. This Court should remand the matter for a full hearing and issue an Order requiring the Court to rehear the Motion for Summary Judgment.

Respectfully Submitted,



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Attorney for Appellant Saffir

November 8, 2020

APPEAL FROM CHARLESTON COUNTY
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

R. Thayer Rivers, Jr., Special Referee

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NOV 16 2020

SC Court of Appeals

Appellate Case No.:
2020-001301

Maria Hernandez, Respondent,

v.

Mary V. Fields, Dora Bennett, Shaakira Saffir a/k/a Shaakira Saffir Nia Rashad

f/k/a Audrey I. Knight, Defendants,

Of whom Mary V. Fields and Dora Bennett are Respondents and Shaakira Saffir
is the Appellant.

PROOF OF SERVICE

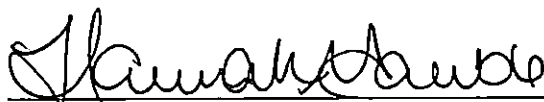
I certify that I have served the Initial Brief of Appellant and a copy of the transcript from the Hearing on the Motion for Summary Judgment on Drew B. Walker, Esq., attorney for Respondent, Maria Hernandez, Mary V. Fields, and Dora Bennett by depositing a copy of it in the United States Mail, postage prepaid, November 9, 2020, addressed as follows:

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Dated: November 9, 2020



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November 9, 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Maria Hernandez, Respondent v Mary V Fields, Dora Bennett, Respondents and
Shaakira Saffir, Appellant

Appellate No. 2020-001301

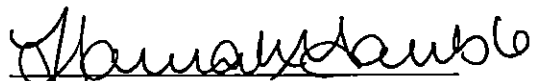
Dear Ms. Kitchings:

Enclosed for filing in the above referenced case the following:

- (1) Initial Brief of Appellant
- (2) Proof of Service of the Initial Brief upon the Respondents

This appeal is being filed on behalf of the Appellant, Shaakira Saffir, who is challenging the underlying Order Granting Plaintiff's Motion for Summary Judgment in the above captioned action.

Respectfully,



Hannah Gamble, Paralegal Real Property

cc:

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Clerk, SC Court of Appeals
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